NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

Congressional Information Service, Inc
Washington, D.C.

CIS

FEDERAL ASSISTANCE REFORM

HEARINGS

BEFORE THE

SUBCOMMITTEE ON

INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 45 and S. 807

MARCH 11, 25, AND APRIL 22, 1981

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
85-594 O
WASHINGTON : 1982

S401-12

COMMITTEE ON GOVERNMENTAL AFFAIRS

WILLIAM V. ROTH, Jr., Delaware, *Chairman*

CHARLES H. PERCY, Illinois
TED STEVENS, Alaska
CHARLES McC. MATHIAS, Jr., Maryland
JOHN C. DANFORTH, Missouri
WILLIAM S. COHEN, Maine
DAVID DURENBERGER, Minnesota
MACK MATTINGLY, Georgia
WARREN B. RUDMAN, New Hampshire

THOMAS F. EAGLETON, Missouri
HENRY M. JACKSON, Washington
LAWTON CHILES, Florida
SAM NUNN, Georgia
JOHN GLENN, Ohio
JIM SASSER, Tennessee
DAVID PRYOR, Arkansas
CARL LEVIN, Michigan

Joan M. McEntee, *Staff Director*
Ira S. Shapiro, *Minority Staff Director and Chief Counsel*

Subcommittee on Intergovernmental Relations

DAVID DURENBERGER, Minnesota, *Chairman*

JOHN C. DANFORTH, Missouri
MACK MATTINGLY, Georgia

JIM SASSER, Tennessee
SAM NUNN, Georgia

Jimmie Powell, *Staff Director*
John Callahan, *Minority Staff Director*
Dru Smith, *Minority Professional Staff*
Pamela D. Hess, *Professional Staff*
Ruth M. Doerflein, *Chief Clerk*

CONTENTS

Opening statements: Page
Senator Durenberger ... 1, 107, 183
Senator Sasser ... 34, 184

WITNESSES

Wednesday, March 11, 1981

Hon. William V. Roth, Jr., U.S. Senator from the State of Delaware ... 3
Hon. Steven D. Symms, U.S. Senator from the State of Idaho, on behalf of Bruce Balderston, legislative auditor, State of Utah ... 8
Conrad Joyner, supervisor, Pima County, Ariz., on behalf of the National Association of Counties, accompanied by Suzanne Muncy, intergovernmental coordinator for Montgomery County, Md., and Bruce Talley, NACo's staff ... 12
Eldon Stoehr, legislative auditor, State of Minnesota ... 36
George D. Brown, law professor, Boston College Law School, Newton Center, Mass ... 47
Henry Flood, director, grant law program, Antioch Law School, Washington, D.C ... 68
Thomas J. Madden, of Kay, Scholar, Fierman, Hayes & Handler ... 86

Wednesday, March 25, 1981

Hon. Carl Levin, U.S. Senator from the State of Michigan ... 108
Richard A. Snelling, Governor of the State of Vermont, representing the National Governors' Association ... 111
Patrick Sweeney, Representative, Ohio State Legislature ... 123
Robert D. Wallick, attorney, Steptoe & Johnson, Washington, D.C., representing the National Assistance Management Association ... 133
Delon Hampton, president, Delon Hampton & Associates, on behalf of the American Consulting Engineers Council, accompanied by Laurence Bory, ACEC staff ... 150
William D. Kelleher, Associate Director for Construction, Housing and Community Development of the Chamber of Commerce of the United States; and John E. Nesbitt, Middletown, Ohio Chamber of Commerce ... 163

Wednesday, April 22, 1981

William J. Anderson, Director, General Government Division, General Accounting Office, accompanied by Bill Thurman, Associate Director; Larry Endy, Group Director; and Paul Posner, Senior Evaluator, all of the General Government Division, GAO ... 185
Edwin L. Harper, Assistant to the President and Deputy Director, Office of Management and Budget, accompanied by Harold Steinberg, Associate Director for Management, and James Kelly, Deputy Associate Director for Intergovernmental Affairs at OMB ... 200
Carl W. Stenberg, Assistant Director, Policy Implementation, and David B. Walker, Assistant Director, Governmental Structure and Functions, Advisory Commission on Intergovernmental Relations ... 217
John Cosgrove, legislative director, AFL-CIO ... 253
Leon Robin, Pennsylvania State director for the National Society of Public Accountants, accompanied by R. Charles Harker, director of government affairs ... 256

Alphabetical list of witnesses:

Page
- Anderson, William J.:
  - Testimony ... 185
  - Prepared statement ... 194
- Bory, Laurence: Testimony ... 150
- Brown, George D.:
  - Testimony ... 47
  - Prepared statement ... 50
- Cosgrove, John: Testimony ... 253
- Endy, Larry: Testimony ... 185
- Flood, Henry:
  - Testimony ... 68
  - Prepared statement ... 72
- Hampton, Delon:
  - Testimony ... 150
  - Prepared statement with attachment ... 154
- Harker, R. Charles: Testimony ... 256
- Harper, Edwin L.:
  - Testimony ... 200
  - Prepared statement ... 210
- Joyner, Conrad:
  - Testimony ... 12
  - Prepared statement ... 23
- Kelleher, William D.:
  - Testimony ... 163
  - Prepared statement with attachment ... 169
- Kelly, James: Testimony ... 200
- Levin, Hon. Carl: Testimony ... 108
- Madden, Thomas J.:
  - Testimony ... 86
  - Prepared statement ... 98
- Muncy, Suzanne:
  - Testimony ... 12
  - Letters to Senator Durenberger: June 3, 1981, with enclosure, and June 18, 1981 ... 27
- Nesbitt, John E.:
  - Testimony ... 163
  - Prepared statement with attachment ... 169
- Posner, Paul: Testimony ... 185
- Robin, Leon:
  - Testimony ... 256
  - Prepared statement ... 261
- Roth, Hon. William V.:
  - Testimony ... 3
  - Prepared statement ... 6
- Snelling, Richard A.:
  - Testimony ... 111
  - Prepared statement ... 118
- Steinberg, Harold: Testimony ... 200
- Stenberg, Carl W.:
  - Testimony ... 217
  - Prepared statement ... 231
- Stoehr, Eldon:
  - Testimony ... 36
  - Prepared statement ... 44
- Sweeney, Patrick:
  - Testimony ... 123
  - Prepared statement with attachment ... 128
- Symms, Hon. Steven D.:
  - Testimony ... 8
  - Prepared statement of Bruce Balderston, legislative auditor, State of Utah ... 8
- Talley, Bruce: Testimony ... 12
- Thurman, Bill: Testimony ... 185
- Walker, David B.:
  - Testimony ... 217
  - Prepared statement ... 231

Alphabetical list of witnesses—Continued Page
Wallick, Robert D.:
Testimony 133
Prepared statement 136

Additional material submitted for the record:
Text of:
S. 45 269
S. 807 321
Statements by:
American Bar Association 367
American Institute of Certified Public Accountants 395
Children's Defense Fund 412
Child Welfare League of America, Inc 425
Commission on Civil Rights 431
Council on Governmental Relations 448
Illinois General Assembly 452
Municipal Finance Officers Association 457
National Association of Counties 461
National Association of Regional Councils 463
National Education Association 470

FEDERAL ASSISTANCE REFORM

WEDNESDAY, MARCH 11, 1981

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 2 p.m., in room 3302, Dirksen Senate Office Building, Hon. Dave Durenberger (chairman of the subcommittee) presiding.

Present: Senator Durenberger.

OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. The hearing will come to order.

Today the subcommittee begins hearings on S. 45, the Federal Assistance Reform Act of 1981, and related legislation. Our subject is commonly referred to as grant reform.

I should say continuing hearings rather than beginning hearings, because this subcommittee has examined grant reform on several occasions in the past. In 1978 Senator Roth, who will be with us today, and Senator Danforth took the lead on this issue. In the 96th Congress the subcommittee considered S. 878 and S. 904. A version of S. 878—combining the best features of both bills—was reported and passed by the Senate. However, no hearing or consideration was given to this legislation in the House of Representatives. The subcommittee is hopeful that, by moving this bill expeditiously through the Senate in the 97th Congress, we can assure favorable action by the House as well.

Although we have labored with this legislation for 3 years, there are still points of contention which must be resolved. We have Senator Sasser's bill before the subcommittee today. I understand that Senator Roth will be offering a bill later this week. I have reviewed a draft of Senator Roth's bill. It was made available to those who will be our witnesses today. There are significant points of difference and new titles with new issues which have not been considered previously by this subcommittee.

The subcommittee has not been the only focus of study for Federal Assistance Reform. The Advisory Commission on Intergovernmental Relations, the General Accounting Office, the Office of Management and Budget, the public interest groups and several special interest groups have applied their expertise to the issues and the legislation. We will be considering the studies, reports and views of each of these groups in the hearings of today and March 25. It may be necessary to schedule an additional day of hearings in April. We want to expedite these hearings, and the mark-up of this bill, as much as possible.

Most of you are familiar with the litany of facts which makes assistance reform compelling. The Federal Government provides assistance through 1,100 separate programs. Six hundred of these programs are grant programs. In 1979, these 600 programs transferred approximately $85 billion of aid to State and local governments and nonprofit organizations. Four hundred forty of these programs are small categorical grants which provide less than 10 percent of all Federal assistance.

The system has grown so complex that the Federal Government has lost its capacity to monitor and evaluate assistance expenditures. In a 1979 report, the General Accounting Office estimated that $192 billion of the $240 billion provided in grants between 1974 and 1977 went unaudited—no audit of any kind. Where audits do occur, they are often duplicative of other audit work, and impose unnecessary burdens on grant recipients.

To address many of these problems—problems which are not of recent vintage—this subcommittee authored the Joint Funding Simplification Act, which passed the Congress in December 1974. The act was designed to build on 10 pilot projects started by OMB. In its 6-year history, a grand total of seven joint funding projects have been added to the list.

With the blessing of the courts, Congress has managed the grants-in-aid system as if it were a contractual arrangement between the Federal Government and State and local governments. In addition to the hundreds of mandates written into specific grant laws, the Congress has imposed at least 59 crosscutting requirements which apply to all recipients of Federal assistance. These requirements have often moved through Congress with little study or consideration of their cost impact on State and local governments. They have been implemented by Federal agencies with no regard to the burden of the reporting requirements. Congress has often determined the allocation of resources, and the priorities of grant recipients, by requiring matching of Federal funds at the local level.

Tested against these facts, I am concerned that S. 45 does not go far enough in reforming the Federal assistance system. The pressure for change has become so great that federalism was a major issue in the recent Presidential campaign. Many of the sorting-out proposals suggested by the new administration, in response to the chaos of the Federal assistance system, bypass the provisions of this bill. If grant reform, in the middle-range sense which we are considering today, is to have any role in the gathering tidal wave of sorting out, we must enact the broadest possible authority and enact it swiftly.

Our first witness today will be chairman of the Governmental Affairs Committee—by virtue of an election for which he did not have to stand. [Laughter.] Senator Bill Roth. He was the pioneer in grant reform legislation and provided excellent leadership for this subcommittee during his years as ranking minority member. We all know of Bill's strong and abiding interest in this and other intergovernmental issues.

I want to extend to you our appreciation and our invitation to participate in any way you wish. I understand that you have scheduling problems and that you have friends from Japan, now enter-ing the room. To the extent that you have time today to participate, Bill, we appreciate it very much. Mr. Chairman, we are ready for your statement.

TESTIMONY OF HON. WILLIAM V. ROTH, JR., U.S. SENATOR FROM THE STATE OF DELAWARE

Chairman ROTH. Thank you, Mr. Chairman. With your permission, I will not read my statement but ask that it be included as if read. I will summarize some of the points that I make in it.

Mr. Chairman, first may I congratulate you on having the subcommittee start on time. This has been a problem in our Governmental Affairs Committee. I am hopeful that each one of us will follow your precedent.

Senator Durenberger, you were recently over in Japan, as was I. I was very fortunate in having the opportunity to meet with many distinguished leaders of the Japanese Government as well as in the private sector. But I was particularly pleased to have the opportunity to meet with some of our colleagues in the Japanese Diet. As you know, there are a number of the members of the Diet here today who have just entered the room. At this time I would like to welcome them and, with your permission, ask that they stand and be seen by all here.

Senator DURENBERGER. I would appreciate it very much if all of our guests would stand. [Applause.]

I certainly enjoyed my visit to the Diet when I was there during the February break. Both Houses of the Diet were busy grilling the Prime Minister and all of the Cabinet Members about the budget. I wish we could enjoy that process in this country. [Laughter.] Make the President and all of his Cabinet come in and let us ask them the kinds of tough questions that these gentlemen were asking their Prime Minister. It is our pleasure to have you as our guests today. Thank you very much.

Chairman ROTH. Mr. Chairman, I think it is fair to say that there is no more important piece of legislation that will appear before this committee or the Congress than the Federal Assistance Improvements Act of 1981.

I had, a couple weeks ago when the Governors were here, a bipartisan group of them call on me and emphasize the importance which they attached to this legislation. I was told by this bipartisan group that they thought they could probably live with the President's proposed reduction in funds if Congress provided the flexibility to enable them to administer the programs or the funds in a fair and a much more simplified manner than has been the case under our categorical assistance programs.

Mr. Chairman, you have stated better than I why this legislation is needed. I think, to sum it up, what we are trying to do is to make government work rather than have government create problems. The way we want to do that is to build into the system some reforms that mean the Federal programs are helping our State and local units rather than merely making them what I sometimes call "administrative appendages" of the Federal Government.

As you well know, the Governors and officials at other levels of government are very much concerned that, in effect, the Federal Government has used their programs as a means of imposing control on State and local governments. I think that the importance of this becomes crystal clear when one stops and recognizes that Federal aid to State and local governments has climbed from approximately $7 billion in fiscal year 1960 to an estimated $88.9 billion in 1980. In other words, Federal aid has risen from less than 2 to 3.4 percent of gross national product and from 14.7 to 23.2 percent of total State and local expenditures over the last two decades. In short, the use of the grant mechanism as a tool for implementing national policies has accelerated over the last two decades.

I might also say that aside from the size and number of grant programs and assistance mechanisms, the number of participants in the process has dramatically increased. Over the past decade, virtually all States and general purpose local governments have become participants in Federal programs. When school districts and special districts are taken into account, it has been estimated that nearly 80 percent of the approximately 80,000 units of State and local governments in the United States receive Federal aid. Adding to the scope and complexity of the intergovernmental partnership are organizations like Federal Regional Councils, multi-State regional planning bodies, private nonprofit organizations, and other special entities which have been established to plan for, administer, coordinate, and spend Federal money.

I might say, Mr. Chairman, that the costs of the existing system are substantial and it is the State and local taxpayers who must pay for the inefficiencies of the system. For example, in some grant programs nearly 30 percent—I underscore that—nearly 30 percent of available program funds are eaten up by administrative and paperwork expenses. It seems clear to me that at a time that we are talking about reducing Federal funds it is important that we eliminate this administrative overhead.

Some 60 crosscutting requirements exist which are applied to a wide variety of grant programs across a range of functions. Now there is need—it should be reasonably simple in my judgment—to simplify those crosscutting requirements.

I might point out that one recent study concluded that in six Federal grant programs, administered by localities, the added cost of those programs to individual taxpayers within those jurisdictions was $25 per resident. No wonder there is an increasing number of units of government that don't apply for funds because of the cost at home.

Now the President proposed on March 10 a series of budget reductions which form a major part of his economic program. I strongly support, in general, the President's economic package and I agree that many functions must be transferred back to those closest to the problems, the State and local governments. Major reductions, like those devised by the President, will significantly affect State and local governments, and in my view there is no better time than the present to rationalize and improve the structure and management procedures which currently tie up the grants process. Seemingly mundane changes like those proposed in the FAIA Act can save money for local taxpayers, help prevent the costs of proposed budget reductions from being passed down to States and localities, and assist in the President's efforts to free

State and local governments, and their taxpayers, from Federal shackles.

Mr. Chairman, I would just like to briefly mention some of the things we are attempting to do in this legislation. In title I of my proposed bill we would provide for the consolidation of Federal assistance programs. What we would do is authorize the President to send to the Congress packages of functionally related Federal assistance programs for the purpose of consolidation. These proposals, which would be limited to three at a time, would have to be acted upon by the Congress, but we provide expeditious procedures so that we can insure that they will be considered within a relatively short time.

Title II would encourage wider use of the single Federal audit concept by auditing recipients, not individual Federal assistance programs. One of the problems is that different agencies, different programs, have different audits. They use different practices. It is complex. I think you spelled out in your opening statement many of them are, in fact, not audited. So I think by simplifying the procedures more programs would be audited and it would be less costly both to the Federal and local governmental units.

We would further encourage Federal acceptance of independently conducted State and local audits which meet generally accepted audit standards. In other words, where local governments have adequate audits, there is no reason why we shouldn't rely upon them rather than superimpose additional audits.

Title III would authorize the President to designate single Federal agencies to simplify and standardize national policy requirements in each of the areas; for example, citizen participation, environmental protection or equal employment opportunity. There is no reason why different agencies should enforce these requirements with different regulations. From the standpoint of the State or local government, they should have one set of rules, irrespective of what agency has jurisdiction over the program.

You already made some mention, Mr. Chairman, of the Joint Funding Simplification Act. We would propose some changes in the act, in the sense that we would give OMB authority to enforce consideration of joint funding. As you indicated in your statement, there were something like seven joint funding projects during the past several years, which is hardly a satisfactory record. What we would try to do is to force the agencies under the direction of OMB to take this approach, which I think can be very promising.

We would also under title V permit a recipient, with the approval of the administrator of the Federal assistance funds under consideration, to shift up to 20 percent of the funds for a given program to another program or other programs in the same functional area. This is a discretionary authority that State and local officials feel would be very helpful in the months ahead in targeting Federal categorical aid funds to the specific needs of their communities, thereby cushioning the blow of the budget cuts.

Mr. Chairman, there are a number of the changes. I would again reiterate that much of the work that has been done in this legislation is due to the Advisory Commission on Intergovernmental Relations, which is an outstanding group that has done the basic home-work on which my legislation and much of the other proposals are based.

Again, I would like to emphasize to you, Mr. Chairman, that I am hopeful that the subcommittee can act very expeditiously so that the full committee can act on your recommendations. I would like to see the Senate act on this legislation no later than April.

[Chairman Roth's prepared statement follows:]

STATEMENT OF SENATOR ROTH

Mr. Chairman, I am pleased to appear before the Subcommittee today to discuss the Federal Assistance Improvement Act of 1981.

I believe this legislation, which expands and improves upon S. 878 the Federal Assistance Reform Act of 1980, is extremely important to the health of our federal system of government and I commend your subcommittee for beginning an examination of grant reform initiatives.

Mr. Chairman, until recently, the federal government has chosen to operate on a revised version of the Golden Rule: if you've got the gold, you make the rules. Federal assistance programs to state and local governments, while often serving useful purposes are administered through a confusing web of regulations, rules and even mandates. The federal government, in part through rule laden grant programs, has assumed more and more of the responsibility for dealing with domestic problems since the 1960's. Perhaps "responsibility" is the wrong word for, in effect, the responsibility for these programs rests with state and local grant recipients. Control, however, has increasingly passed to the federal government.

Let me just briefly outline today some of the ways this increased federal control is manifested in our modern system of government. For example, dollar amounts of federal aid to state and local governments have climbed from approximately $7 billion in fiscal year 1960 to an estimated $88.9 billion in fiscal year 1980. The annual rate of growth during the last two decades has been about 15 percent. Federal aid has risen from less than 2 to 3.4 percent of Gross National Product and from 14.7 to 23.2 percent of total state and local expenditures over this period. In short, the use of the grant mechanism as a tool for implementing national policies has accelerated over the last two decades.

The types of grant or assistance mechanisms have multiplied as the level of funding for assistance programs has expanded. A variety of intergovernmental transactions occur under formula and project grants, block grants, general revenue sharing, procurement contracts as well as grant and cooperative agreements. Determining which instruments to use to accomplish national purposes most efficiently and effectively has proven to be a stiff challenge for assistance program architects.

Aside from the size and number of grant programs and assistance mechanisms, the number of participants in the process has dramatically increased. Over the past decade, virtually all states and general purpose local governments have become participants in federal programs. When school districts and special districts are taken into account, it has been estimated that nearly 80 percent of the approximately 80,000 units of state and local government in the United States receive federal aid. Adding to the scope and complexity of the intergovernmental partnership are organizations like Federal Regional Councils, multistate regional planning bodies, private non-profit organizations and other special entities which have been established to plan for, administer, coordinate and spend federal money.

Mr. Chairman, I have briefly outlined here some of the characteristics of the currently existing federal assistance system. As these examples reveal, the federal aid network of today is complex, confusing and serves to muddy the intergovernmental waters making it virtually impossible to determine who is doing what, who is paying what part of the bill and who is responsible for which function. The grant system has grown so rapidly and with so little comprehensive forethought, that our ability to manage the system has been strained to the breaking point. "Managing" federal programs today means overseeing the management of federal funds at the state and local level. The existing management process in the federal government has simply failed to adapt to the reality of a domestic service delivery system based on federal aid programs. We have tried to fix up a management "Tin Fizzy" by adding a new coat of paint and tuning the engine. It is time to devise new and lasting management reforms to simplify the grants process, reduce paperwork, eliminate unnecessary red tape and save federal, state and local tax dollars.

The costs of the existing system are substantial and it is the state and local taxpayers who must pay for the inefficiencies of the system. In some grant programs, nearly 30 percent of available program funds are eaten up by administrative and paperwork expenses. Some 60 cross-cutting requirements exist which are applied to a wide variety of grant programs across a range of functions. More than half of these requirements are less than ten years old and in some cases up to 60 percent of the costs of implementing these cross-cutting policies, which have little to do with the fulfillment of a particular grant's purposes, is shouldered by local governments. One recent study even concluded that in six federal grant programs administered by localities, the added costs of the programs to individual taxpayers within the recipient jurisdictions was 25 dollars per resident. The costs of our inefficient grants system affects the local taxpayers in a direct, possibly substantial way. The hidden tax of the red tape associated with federal grants is real but seldom seen.

The President proposed on March 10th a series of budget reductions which form a major part of his economic program. I strongly support, in general, the President's economic package and I agree that many functions must be transferred back to those closest to the problems, the state and local governments. Major reductions, like those devised by the President, will significantly affect state and local governments and in my view there is no better time than the present to rationalize and improve the structure and management procedures which currently tie up the grants process. Seemingly mundane changes like those proposed in the FAIA Act can save money for local taxpayers, help prevent the costs of proposed budget reductions from being passed down to states and localities and assist in the President's efforts to free state and local governments, and their taxpayers, from federal shackles.

I do not need to review the bill in depth Mr. Chairman. However, there are several unique features of the bill this year which should be outlined briefly. I want to stress here that while the bill proposes some long-term procedural and management reforms, it also contains a number of short-term, potentially significant changes in how grant programs are used by state and local recipients. For example, Title V of the bill would allow grant recipients, under certain conditions, to shift up to 20 percent of available grant funds between specific categories of grant programs. This provision would allow state and local governments to establish priorities as they see them and not as the "experts" in Washington do. It would, in effect, shift more decision making authority to the local governments even though the categorical programs themselves would not be statutorily altered.

Another example of the short range, immediate reforms contained in the bill legislation is in Title III, the so-called cross-cutting section of the legislation. The title would allow for certification of state and local recipients so they would not be required to file endless reports and plans to comply with the requirements of various cross-cutting statutes. It would also require the President to study the existing cross-cutting requirements and recommend to Congress revisions or outright eliminations of unnecessary, costly or simply outdated requirements. Finally, Title III would provide authority for the OMB to suspend, for a period of 180 days, the implementation of a cross-cutting requirement should the requirement prove to be especially onerous or unworkable.

These aspects of Title III would allow for a relatively quick response to the costs and unnecessary conflicts presented by cross-cutting statutes and requirements. It would give states and localities more flexibility to cope with budget reductions and allow them to assume more authority over program operations.

One other aspect of the bill which I would like to mention concerns the consolidation authority provided in Title I. Consolidation of categorical programs is a major component of the President's strategy to shift more authority to state and local governments. However, major consolidations, like those proposed by President Reagan, have only rarely been accepted by Congress. The procedures in Title I would expedite the process of considering consolidations and force Congress to go on record concerning consolidation proposals. In effect, the Title would force Congress to fish or cut bait when it comes to grant consolidations.

Mr. Chairman, these reforms, as well as others contained in the FAIA Act, can provide greater flexibility in the short-term for states and localities and improved less costly management of federal aid programs on a more long-term basis. I assure you that the full Committee will expeditiously consider the grant reform issue once your Subcommittee completes its deliberations. I am certain we can gain the backing of the Administration for these proposals and I anticipate serious consideration of the bill in the Senate in the near future.

I believe we need to signal a change in our philosophy toward state and local governments at the federal level. This bill sends such a signal and I urge the Subcommittee to act quickly to ensure its passage.

Senator DURENBERGER. Thank you very much for your statement and for your leadership in general on the issue. I understand you have a time problem so I will submit all of my questions to you in writing. You can take them home with you. [Laughter.]

Chairman ROTH. All right. Thank you.

Senator DURENBERGER. Thank you, Bill. I also thank our guests from Japan. We appreciate very much your being here.

Our next witness will be Senator Steve Symms of Idaho.

Steve, welcome to the hearing. I understand you have a statement that you would like to make.

TESTIMONY OF HON. STEVEN D. SYMMS, U.S. SENATOR FROM THE STATE OF IDAHO, ON BEHALF OF BRUCE BALDERSTON, LEGISLATIVE AUDITOR, STATE OF UTAH

Senator SYMMS. Thank you very much, Mr. Chairman. I would say that my Committee on Environment and Public Works is having its budget meeting upstairs, so I will be very brief with you and won't belabor your hearing. But I do appreciate the opportunity to come before your subcommittee to submit for the record the testimony of my State's legislative auditor, Mr. Bruce Balderston.

Last month I met in Boise, Idaho with Mr. Balderston and State Senator David Little, who represented the leadership of the Idaho State Legislature. At that time they made their views known to me regarding the audit requirements of the proposed legislation. I asked that Mr. Balderston prepare testimony for this subcommittee's consideration, outlining in detail the impact this bill would have on our State government.

Mr. Balderston's testimony expertly details the concerns with the audit requirements and I am pleased to commend his remarks for your careful consideration. I understand that the national president of the State Legislative Auditors, Mr. Stoehr, will also be testifying on this matter and that his remarks will closely parallel the concerns outlined in Mr. Balderston's testimony.

I would urge this subcommittee to very carefully weigh the legitimate concerns which the States are identifying concerning this proposed legislation.

I thank you very much for the opportunity to appear before you this afternoon.

Senator DURENBERGER. I thank you very much. We will accept the testimony of the Idaho State auditor. Thank you for your personal concern on the issue, Steve.

Senator SYMMS. Thank you.

[The prepared statement of Bruce Balderston follows:]

PREPARED STATEMENT OF BRUCE BALDERSTON

I. INTRODUCTION

The following testimony is presented relative to Title II—Financial Management and Audit of Federal Assistance Programs of Senate Bill 45, by the Legislative Auditor of the State of Idaho. The testimony has been reviewed by the Co-Chairman of the Joint Finance Appropriations Committee of the Legislature of the State of Idaho and no exceptions to statements made were noted.

The attached appendix provides background information on the Legislative Audit function in Idaho and the present appointee.

II. CONCLUSION

Considering Title II as a whole, I am totally supportive of the objectives of the bill. I believe that such audit coverage of government operations is long overdue. I am also confident that State post auditors can play an important and cost effective role in achieving the stated objective.

Notwithstanding my strong support for the objectives, I must express equally strong opposition to the bill as presently written. My opposition stems from the fact that after long years of low priority for the audit function, this bill attempts in one move to raise auditing to a high priority and place this enhanced responsibility on the states. As I think I show later, this will cause an increase in workload of nearly incomprehensible proportions at least in the State of Idaho.

In return for the increased workload the title does reference "direct reimbursement of expenses" but does not appear to consider the impact of initially building the necessary capacity. Secondly, depending upon the policies developed to implement "direct reimbursement", the state may be forced to supply financing to maintain a staff prepared to do federal audit work but receive no compensation in return. This point is more fully developed in the summation of my testimony (III, E).

I cannot become fully supportive of this proposal until there is clear recognition and correction of the fact that a great deal is required of the state and potentially very little is given in return.

III. SPECIFIC IMPACTS AND PROBLEMS

A. Audit cycle acceleration

Presently the State of Idaho completes audits of all agencies once every three years. The audits vary from annual financial audits performed by private CPA firms to financial/compliance/extended scope audits performed by my office on a three year cycle. The change to a two year cycle would impact my office by creating an on-going workload increase of approximately one-third. One way or another this will require added manpower.

There should be little, if any, impact on local units of government since they are presently required to perform annual financial audits.

B. Increase audit coverage

The audits performed by private CPA firms at present appear to be primarily financial audits. Imposition of compliance requirements could result in increased costs by as much as twice present costs. Some comparative costs are presented later in my testimony.

It is probable that this impact will affect some portions of the State and most local units of government.

C. Subgrantee audits

The bill imposes responsibility on the State for audits of Subgrantees. I find it very difficult to comprehend how this can be executed. Let me cite an example to show the problem. Federal grant money flows into the State of Idaho through our Office of Aging. This Office in turn passes money to the regional Councils of Government (COG). The COG's may further subgrant this money to a local non-profit aging organization.

As a result, the State of Idaho would be responsible for assuring audits of the state agency, the COG, and the non-profit. With this responsibility, the State will have to develop a system to record receipt, all subgranting actions—through multiple levels, record audit coverage, and devise a mechanism to collect and convey audit exceptions back to the Federal level. Clearly, this will not be easy or inexpensive. Neither will it be accomplished without added manpower. This proposal will affect all levels of government. The state will bear the major portion of the impact.

D. Quality review.

There is presently before the National Audit Forum and the ten Regional Audit Forums, a proposal to create a procedure for auditors to review the work of the other auditors (Peer Review). The General criteria of the review would be good management practice and the audit standards promulgated by the General Accounting Office. Presumably, this procedure would suffice for the quality review mentioned in the bill.

In responding to the Peer Review proposal, I again had to express agreement with the concept, but disagreement with the implementation. The reason is that the review compares an organization against an ideal rather than against utilization of available resources. As a result, a potential exists to be severely chastised for not achieving the ideal while at the same time having done a good job with available resources. Of what value is a critique if no resources are made available to resolve the problems exposed? The audit process is sufficiently difficult already without actions that detract from the credibility of auditors and provide no means to respond to the problems.

I must note that I am aware of problems within my small organization. They could be solved by investing in expensive people time. The difficulty in resolving these problems stems from the need to maintain an audit cycle while at the same time training for the future, developing procedures for the future and generally planning for the future as well as assessing the past. With fixed staff levels and money, the future situation is likely to be worse than the present or the past. Title II simply adds problems with no aid to solution.

A second issue that may be implicit within the quality review provisions of this title is a question of quality review of private firms. For example, if my office consolidates audits for our Office of Aging and all subgrantees thereof, am I faced with the prospect of doing or obtaining quality review of the subgrantee auditors? If so, I am again faced with a demand for man hours of effort by highly qualified expensive people and thus more money. Both of these problems impact the state but could also cause increased costs for local government.

E. Summation and alternative.

I have attempted to be realistic in considering the impact of this title upon the State of Idaho. I believe there can be no doubt that Title II will require substantial increases in the audit work force in the State of Idaho if direct compliance is attempted. There does not appear to be an overwhelming amount of support for this from either the Executive or Legislative branches in the State.

Another solution is to contract this work to the private sector. As the following schedule shows financial audits performed by the private sector will be at least 70 percent higher than the equivalent audit by qualified government employees. The differential will likely be even greater with the addition of compliance testing to private sector audit work. Obviously, this option represents an even greater financial impact upon the state.

COMPARISON OF AUDIT BILLING RATES PRIVATE SECTOR FIRMS AND LEGISLATIVE AUDITOR

Personnel classification	Rate per hour	Hours	Cost
Firm A:			
Partner	$87.50	290	$25,375
Manager	62.50	485	30,312
Senior	37.50	1,035	38,812
Staff	31.25	2,300	71,875
Total		4,110	166,374
Firm B:			
Partner	99.00	216	23,384
Manager	65.00	406	26,390
Senior	38.00	900	34,200
Staff	23.00	1,805	41,515
Total		3,327	123,489
Legislative auditor:			
Legislative auditor	26.00	253	6,578
Audit supervisor	24.00	445	10,680
Senior	22.00	967	21,274
Staff	16.00	2,052	32,832
Total		3,717	71,364

Notes.—

1. Average of private firm hours used for legislative auditor estimate.

2. Private firm rates taken from bids for audit of higher education. Rates are adjusted to 100 percent of standard billing rate compared to 80 percent quoted in bids.

3. Above costs would cover audit resulting in: (a) opinion on financial statements, (b) a statement on internal control. Compliance testing could add between 50 percent to 100 percent of above costs.

While the cost differential shown above covers a variety of things (taxes, research staffs, etc.), it also permits salary payments to be made while an auditor performs non-billable but necessary functions. Present reimbursement policies do not appear to be very permissive in this respect. Thus, government auditors are expected to be heavily involved in billable audit work while private auditors enjoy greater leniency. I detect an inconsistency in such a policy.

I believe the objective of the title can be met and should be. But, I also think that the Federal level of government has a responsibility to assist building the capacity of state audit organizations and providing some stable continuing financial assistance to the states.

IV. CAUSES OF PRESENT CONDITIONS

I believe the foregoing indicates that Idaho is ill-prepared to deal with the proposal of this title of Senate Bill 45. I seriously doubt that we are unique. I thought some discussion of the causes of the condition might be pertinent and had planned to develop some. However, the problem has been covered much better than I could do in a report by the General Accounting Office. This report is entitled "Federal Assistance System Should be Changed to Permit Greater Involvement by State Legislatures" (Report #GGD-81-3). I commend it to your reading. I believe that lack of involvement in the Federal grant process has led to a lack of interest in audit of federal money. That lack of interest meant there was no need to develop audit staff. The general feeling has been, "its Federal money, let the Feds audit it". With this lack of state legislative involvement in the past, now suddenly the "Feds" want to place audit responsibility on the state.

I think a little better selling job is in order and substantially more financial equity should be evidence.

I thank the subcommittee and its staff for its courtesy in receiving my views on this issue.

APPENDIX

I. Development of legislative audit in Idaho

The Legislative Audit function was created in 1970 as successor to a post audit function in the Executive Branch. Initial staff consisted of 15 people. In the following 11 years the staff grew to a maximum of 23 and has now returned to 21. Sixteen of the 21 positions audit continuously. The other five positions consist of myself, an audit supervisor performing technical review of audits, a report production typist, a secretary and an accounting technician.

The Legislative Auditor is appointed by the Joint Finance-Appropriations Committee of the Legislative for a six year term and confirmed by both legislative chambers. The appointee must be a Certified Public Accountant, a citizen of the United States and have at least five years experience in governmental, financial affairs.

The primary function of the office is to audit state government. By law, the Joint Finance-Appropriations Committee can direct performance of an audit on any governmental body in the state other than Federal operations. Some private sector entities deriving substantial revenue from the state are also subject to audit.

II. Current legislative auditor

My name is Bruce Balderston. I hold a B.A. Degree with majors in Accounting and Economics. I am a Certified Public Accountant (1965) and a Certified Data Processor (1971). I have been employed in state government in excess of 13 years in capacities ranging from computer programmer to data processing management to budget analyst to Legislative Auditor. I have held my current position for approximately 18 months.

Senator **DURENBERGER**. Our next witness will be Conrad Joyner, who is the supervisor of Pima County, Ariz., Conrad is here to provide testimony on behalf of the National Association of Counties. He will be joined by Suzanne Muncy, the intergovernmental coordinator for Montgomery County, Md., and Bruce Talley of NACo's staff.

I understand Linda Church was also to be here. She is usually very involved with this subcommittee, but took time off to give birth to her first child. We are very pleased that you are able to come today. Conrad, welcome to Washington and to the subcommittee hearing.

TESTIMONY OF CONRAD JOYNER, SUPERVISOR, PIMA COUNTY, ARIZ., APPEARING ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES, ACCOMPANIED BY SUZANNE MUNCY, INTERGOVERNMENTAL COORDINATOR FOR MONTGOMERY COUNTY, MD., AND BRUCE TALLEY, NACO'S STAFF

Mr. JOYNER. Thank you, Senator. I also want to thank you for encouraging and allowing members of your staff to participate with us in our recently concluded National Association of Counties Legislative Conference. They were most instructive. I felt somewhat red-faced as I came in the room because of certain remarks I made over at the Hilton and I discovered it is easier to say things outside of these halls than it is inside of them.

You know, it is very interesting. I want to personally thank you also. I have had two experiences in the last 2 weeks of my life, for the first time. I served 4 years as the city councilman, a vice mayor, and 9 years now as a county supervisor. In the last 2 weeks I have testified for the first time before the State legislature and for the first time before the Congress. So I thank you for allowing me that opportunity.

As you indicated, Suzanne Muncy is with me and Bruce Talley. I should tell you, and I hope you won't hold it against me, that I am also a professor of political science at the University of Arizona.

Senator DURENBERGER. I am surprised you didn't take the opportunity to testify before the Japanese Diet. [Laughter.]

Mr. JOYNER. The way I feel here this afternoon is I want to say "hip, hip, hurrah" for what I have heard from both Senator Roth and yourself. We think that this is the year; we hope this is the year.

We want to talk with you, representing 3,000 county governments, and we are really committed to assisting you in your hope and Senator Roth's hope that you will move expeditiously on this legislation, that the bill will in fact encompass many of the items which Senator Roth indicated in a broad brush.

Now we have been asked to address some specific questions, which we are going to do. We are also going to give you some of our ideas.

First of all let me talk about grant consolidation. I think we have all come to the conclusion that grant consolidation is an absolute necessity. There is no question about our doing it. The question is how that consolidation process will work and some of the reasons for its need.

I think one of the things that we possess as a result of our election is that our political process has suffered by the special interests who, in effect, destroy consolidation movements in grants. This happens. We all know that. It is a tough, tough thing to stand up to the special interests in this regard.

But we believe that consolidation accomplishes those things which we have talked about for so long—effectiveness, efficiency and economy. In the past, however, consolidation has suffered, as I said, because of the many special interest lobbies with very narrowly defined programs. It is going to be a big hurdle to get over, but I hope we can all get over that.

Now in S. 45, which we have a copy of, which is Senator Sasser's bill, we believe that the consolidation process is not strong enough. We want to see the tough discharge procedures originally proposed maintained. We think these are absolutely essential. Without them, committees may fail to act as we have seen too often in the past.

The process outlined under what we believe to be Senator Roth's bill contains the stronger process. That is the process we support.

In response to the second part of my question, how the consolidation process should work, there really is no easy answer, as I am sure you know much better than I. Consolidations are very, very complex. Certainly consolidations can save money. People estimate at least $3 billion could be saved as a result of consolidations. Consolidations can reduce Federal support in particular programs and thus help the Federal Government in its effort to balance the budget. We support these goals, but we have to ask some questions. I will list a series of them for you, Senator.

What programs would be included in the packages, and by what criteria? Would criteria be based on function or by client served? What programs would be eliminated altogether? What funding levels would be established and would they provide adequately for the services assumed under the new program? What program requirements would be maintained and what eliminated? Would consolidation, even with fewer dollars, coincide with a reduction in Federal mandates? Senator, I have to underscore that point. For those of us who are down there with our hands on these programs, the Federal mandates have to be reduced somehow.

Then the next one—and we are concerned about this—would consolidation simply shift the responsibility and tax burden to local governments? I don't think you want that. I don't think the sponsors of the bill, the supporters of consolidation, want that. But it is something that can happen.

Finally, if block grants are to be designed with the States as the primary recipient—I met yesterday at breakfast with the Arizona congressional delegation, all members of it, and we asked this question—what provisions would be made to insure that local governments, counties and cities, receive the dollars if the function is now being performed at the local level? It is a tough question, I think.

We also question whether the legislation under consideration today should limit the President to proposing only functionally related programs. How is "functionally related" to be defined? NACo believes that the President should have some flexibility in interpreting what is functionally related.

We are saying packages must be carefully thought out and applied on the basis of what will work. Remote Federal bureaucrats are not always in the best position to make that determination. It is for this reason that we propose a set of principles and ask that Congress under these principles react in its consolidation process.

The first principle is that any consolidation plan afford State and local government officials a meaningful opportunity to design the program, not just to react to it, Senator. We are in the best position to tell the Federal level what will work—at least we presume we are.

Second, that any consolidation be clear.

Third, that any plan provide a transition period or phase-in where local governments have the option to switch to the new program within a year's time.

Four, that local governments—here is another sticky one—be granted a hold-harmless for those programs which they are already receiving aid.

Five, that States—again we come back to this question on the block grants—that States be required to passthrough block grant dollars when the function is performed at the local level. I guess I made that point twice.

Six, that consolidated programs utilize State and local governments' own laws and procedures for spending funds.

And finally, that the cornerstone of any consolidation proposal be simply this: To provide more flexibility to State and local governments with an absolute reduction in Federal mandates and regulations for more efficient and effective government. No consolidation will shift program responsibility from one level of government to another with no real savings to the taxpayer or increased taxes to cover basic services. I think again I have said that before. Don't just shift something to us without giving us some flexibility.

Some other components of the legislation: auditing and financial management. We endorse the audit provisions provided in both Senator Sasser's and Senator Roth's bill. The legislation provides statutory authority to the single audit concept. We are pleased to see the retention of this language, and we proposed it last year.

We also were asked by your staff to address the issue of the Governmental Accounting Standard Board. On May 4 and 5 of this year there will be hearings in Philadelphia. We will present our position on that. We hope to be able to develop some principles and alternatives which will simplify those procedures. In other words, we acknowledge at the local level we do have some localities that don't have the kind of accounting procedures that you would require.

Standardization of national policy requirements: Here we move right into crosscutting. We recognize again the need for flexibility. The word "standard" alarms us because we do not believe that one program or one standard will fit all the needs for all governments and all Federal programs.

We appreciate this subcommittee's response to our concerns. We wholeheartedly endorse the certification requirement. However, specific care should be taken to be sure agencies accept the certification of the lead agency without adding any new provisions.

Now coming back to crosscutting: Crosscutting requirements are the fastest-growing and most costly of all Federal mandates. Our association recently completed a small survey of what counties deem the most burdensome of the 59 crosscutting requirements. Davis-Bacon and the 504 requirements were cited the most often in the socioeconomic category, while A-95 and FMC 74-4 topped the list in the administrative/fiscal category. Criticisms commonly shared were the high costs of compliance, with particular emphasis on something which you pointed out—ambiguous and conflicting policies.

Integrated grant funding, another subject: The integrated grant funding section will amend and strengthen the Joint Funding Simplification Act. That act was well-intended but has not worked. NACo knows of not one single example of a jointly funded project in county government as a result of the passage of the Joint Funding Act. We don't know of any. There may be some. We just don't know of any.

On the other hand, this legislation reduces many of the barriers. It does do that. With the barriers removed, the incentives to make better use of joint funding may not be necessary. You may then ask, who should propose the programs? Of course, I am sure you can answer that question as you listen to a county official. We don't believe that remote Federal officials can design programs that will always work. At the same time, commitments must be shown at the Federal level to achieve wide use of the joint funding concept and acceptance. For these reasons, packaging of jointly funded projects should be done at both levels.

Miscellaneous title: Next to consolidation and auditing titles, counties consider the various provisions contained under this title to be of utmost importance. We wholeheartedly support the provisions included in this title referred to as the "Local Governments' Bill of Rights." Specifically, we believe that regulatory flexibility is essential and strongly urge the subcommittee to include it in the final legislation. We support OMB analysis of the administrative costs associated with Federal assistance programs. However, we urge that the costs local govenment bears in implementing Federal programs be considered as an essential component in determining the true administrative costs of Federal programs. To determine only the administrative price tag on the Federal level would severely distort the actual Federal dollars expended on administration and would not accurately depict the waste or duplication in managing Federal assistance programs.

Sunset: Finally, the proposed legislation by Senator Roth includes a new title, we believe, which provides for sunset. NACo has a longstanding policy in support of the sunset concept on a 5-year cycle basis.

This concludes my summary remarks. I take this opportunity to thank you, Mr. Chairman, for allowing us to be present and to state the counties' point of view. I reiterate that county governments believe that intergovernmental reform, and particularly consolidation, is one of the most important and crucial issues before this Congress. We must consolidate programs. We must streamline the grant system. We must reduce Government regulations and we must eliminate Government mandates. You and I and even the President cannot do this alone. We must work together.

On behalf of the Nation's county governments, I ask that each member of the subcommittee and members of the full committee make passage of this reform legislation a personal crusade. I would say to you and to those who are not here, please talk to your colleagues in the House of Representatives. Get their support. We must move this legislation through the House or, as in the past, our efforts will fail, and they have failed.

We appreciate the leadership of the past. We urge you to renew your leadership. You must specifically and personally campaign on behalf of this legislation. The time is right. Again, Senator, I offer the support and whatever we, the 3,000 counties of America, can do on our behalf to help you.

Thank you.

Senator **Durenberger**. Thank you very much. I could have taken offense with a lot of what you said if it hadn't been for the fact I only got here 2 years ago and was in the minority for both of those years.

Mr. **Joyner**. We share the same party, Senator.

Senator **Durenberger**. The other night I was out in Maryland giving a speech. To show you the commitment of counties, a county executive stood up and gave much the same speech you just gave. He then announced that he was going to run for the U.S. Senate from Maryland. [Laughter.] I know your cause is right and you believe in it.

I would like to start my questions with the consolidation title and work my way through the bill in the remaining 15 or 20 minutes.

Is it your recommendation that title I include no criteria like functional relationship, as in the Sasser proposal, or similar resolutions? Some people suggest that it would limit the consolidations proposed under this title.

Mr. **Joyner**. I think our position would be that we would accept either so long as the statement was clear.

Senator **Durenberger**. The response is clear to me. There is a substantial difference between the two. That difference will be one of the issues.

Mr. **Joyner**. Would you like for Miss Muncy to explain more on that?

Senator **Durenberger**. Certainly. All of you are free to respond.

Ms. **Muncy**. There are two different areas, Senator. The functional area in some of the block grant cases would be quite sufficient. In other areas, if you are talking about direct services to clients, like in the welfare case, it would be very nice to package client's services and deal with the client as a whole individual rather than fractionalized. So in certain cases it very much depends upon the legislation and the types of programs that we would hope to see blocked together in consolidation.

Senator **Durenberger**. My next question is related. Should every consolidation, block grant, or proposal of that type be considered under the procedures of title I? Can you think of appropriate areas—outside of the title I process and at the President's discretion—where we might make room for some of it? Or should we force everything into the title I consoldiation?

Ms. **Muncy**. No. I would like to see some flexibility so that the President, working with the various Secretaries of the affected Federal agencies, could work with not only their staffs but local staffs as well to come up with the best consolidated package in order that they can be administered as effectively as possible, whether the beneficiary is the actual individual or whether it is a program dealing with services across the broad spectrum.

Mr. **Joyner**. I think what we have here, Senator, is the recipient of these programs is out there in the boondocks, so to speak. When we are talking about consolidation, I think Suzanne has said it well. But there also has to be a degree of flexibility which does not try to put everything in an either/or category. That is the reason my initial response to you was either. But I should have said either and flexibility.

Senator DURENBERGER. In your full statement—which will be made part of the record—you enumerated a variety of suggestions on page 7. I agree with your suggestion that State and local governments should play a part in designing consolidations. The statement indicates, however, that your recommendation—as to mechanism—is that there be a State and local team at every agency. If that is still your recommendation, it strikes me as being somewhat cumbersome. Aren't there alternatives for that—such as ACIR, that has a strong State and local component—which would satisfy your involvement suggestion?

Mr. JOYNER. Senator, you get a bit more difficult with that question. That is a tougher question, obviously.

It seems to me that what we are trying to say here is that somehow we need to be as closely associated with the agencies as is possible. Now if there are mechanisms which will allow that to happen, then I think our response would be in the affirmative. Right?

Ms. MUNCY. Yes.

Mr. JOYNER. But we don't know whether the other mechanisms, ACIR, will do it for us.

Senator DURENBERGER. Then, the response to the next question will be similar. Point 2 on page 2 includes the phrase "all parties in agreement."

Mr. JOYNER. Again, yes.

Senator DURENBERGER. You are talking about substantial agreement and not necessarily a veto on the part of third parties.

Mr. JOYNER. No; we are not asking for that.

Senator DURENBERGER. Point 4 on page 8—you also addressed this in your opening statement—is the hold-harmless provision. Could you expand on that more as to precisely about what you are talking?

Mr. JOYNER. Let me defer to Suzanne. I can then give you a couple good examples.

Ms. MUNCY. I suspect we all have good examples. Probably going back to the community development block grant is the best example of the hold-harmless provisions.

Most of us have been in this process for a long time. We have a lot of the delivery system in place. We not only have staffs that are involved but we also have clients who expect a service and have been accustomed to having services. You can't really just cut them off in midstream. It takes time to make crossovers. It also takes time, if we are talking about programs being stopped at the local level and either picked up at the State level or delivered at the State level, to have a phase-across to that other functional level. We can't in all consciousness suddenly tell somebody they are not eligible for a service and they have to go to Annapolis, in the case of Maryland, for that service.

So what we would like to have is a phasing process, a hold-harmless provision, that would hold us harmless for some period of time—be it 12, 16, 18 months—to allow us to make the changes that will be coming so we can phase the programs as well as the clients.

Mr. Joyner. I think, Senator, that what will happen if it goes into certain States, and I think of our own State, without a hold-harmless clause, is that in a sense—and I am looking at it from a political point of view in part, not altogether—there will be a degree of havoc if there is not some kind of hold-harmless provision. There will be a beating on our doors like there has not been in the past.

I think a hold-harmless clause allows us an opportunity to move through that with a minimum amount of dislocation. It doesn't save as much money as you would like to save immediately, but I think it saves some faith and I think it also enables us to make the kinds of decisions that we are going to be asked to make.

I hope I am clear on that. Buying some time is what it is doing, and it is also eliminating, from what I would see as my point of view, some very, very difficult and unfortunate pressures.

Ms. Muncy. We are talking about an orderly, logical transition, for whatever the purpose may be, and to whatever level of government or function these things may be talking to.

The other side of it is also that none of our budget processes interface with each other. The Federal fiscal year is October 1. Some States are on a January and some are on a July. Some of our legislatures are in session now. They will be going out in 30 days. Others only meet once every 2 years.

Some of these changes are major changes that we are speaking to. There is no way for either State or local governments to respond legislatively or to take some of these into account in terms of budget impact.

Mr. Talley. Just one comment on that, sir. It is really the motive behind this we are trying to get at. Suzanne mentioned that we are talking of a time of hold-harmless to give us the ability to do some adapting. If it is less money over time, it is time to adjust to different levels which is needed if we go the devolution process, and move some of these things through a State agency, we have to adjust both politically and fiscally at the local level. In some cases we might be moving totally to a different type of tax base. So the hold-harmless is a time adjustment and not the retention of a higher level dollar volume. We are also very nervous about the grant consolidation in the devolution process. There is a certain amount of dollars for it in administration at the lower level which will be saved by getting rid of "fraud and abuse," but there is also part of that which cuts into the meat of the program. We need some time to assess what that meat level is and then work that out on a tax structure.

Senator Durenberger. Take a look at five and six. This gets to the heart of what will be our problem in this so-called orderly transition.

If I have heard it once, I have heard it a 100 times in the last few weeks: "Fine, block it, but don't let the State block it." In item five you talked about the requirement for a State passthrough of block grants where the function is performed at the local level. On the other hand, you recommend that we leave spending decisions to the process which exists at the State or local level. This would speak to a role for the State legislature in particular.

Is there a distinction between the two? How do you view the process of deciding on expenditures at the State and local level?

Mr. JOYNER. Senator, I can give you an answer that somebody proposed the other day. It is probably not a very satisfactory one. That is, if you really want to consolidate the whole program, why doesn't somebody add up the amount of nonmilitary spending in each city and county or other jurisdiction in America and give us, let's say, 70 percent of it, or 60 percent of it. We would be very happy. We will go away and not bother you.

But, you see, what happens is you give it to our dear friends in the State. While they are enlightened and true servants of the people, they also have some ideas about what they think should happen that might be different from those of us who are actually out delivering services at the local levels—the things we have been doing for a long time.

So, on the very serious side, what we are afraid of is the legislation may, indeed, be categorical grants coming from the States to us. We don't want that, either. We would almost be willing to tell you to keep the categorical programs if you are not going to allow us to have some discretion. I had this argument, believe me, with Senator Goldwater, Senator DeConcini, John Rhodes. Bob Stump said flatly, no, there is no way he can support that. John Rhodes, I think, said much the same thing. They acknowledged that sometimes local governments do have problems with State legislatures and State officials.

Again, this is a serious problem. I don't know how it is going to be accomplished unless you help us accomplish it. That is, you have to encourage them to do good, to continue funding those programs or at least the ones we are funding at the local levels, and then let us make some decisions. If we decide not to fund those programs, Senator, then it seems to me the money does go out to the State. I don't know whether Suzanne and Bruce would agree. In other words, Senator, if we make a decision not to fund a program which is currently being funded, then that portion of the money somehow will go back to the State.

Ms. MUNCY. Just a couple of remarks. One, I think there is confusion because some of the block grants have been proposed. Those services, or at least the funding, now does flow through the State. The State either retains those funds or does pass them through on some kind of formula basis.

For some of the other grants it is a direct relationship between the local governments and the Federal Government. We enjoy that relationship.

The confusion comes if you are putting all of these together and saying now they are to go altogether to the State. We are operating the programs. We don't know whether we will be continuing to operate those programs through the State, or whether the State will retain those funds and pick up operating direct services themselves, or retain the funds and not create any direct service functions. So we would have clients without something to do.

There is also the paperwork burden. At the present time not only do we have the Federal paperwork burden, we also have the State paperwork burdens. In most every State program or service we deal with, there is a contract attached to grant applications. This is unlike the Federal system where the grant is considered a contract and a legal document. At least in the State of Maryland they will attach seven copies requiring seven original signatures to every grant application. There is just duplication in the Federal system in packaging them up in crates—the applications—and shipping them off.

Senator **Durenberger**. I take it, as I read six, then that consolidated programs utilize State and local governments' own laws and procedures for spending funds, literally as State procedural laws or requirements, not necessarily having the State legislative process make decisions on allocations of funding.

Ms. **Muncy**. I think that would vary by State as to how the State is divided between the executive and legislative branches and the authority of each. In some States the legislative branches do have the authority to do that.

Senator **Durenberger**. What does No. 6 mean?

Mr. **Joyner**. This is six, which says consolidated programs utilize both State and local governments' own laws and procedures for spending funds. I think you caught us with a degree of ambiguity here because what we are saying, on the one hand, is that we really want flexibility. Yet we are saying in six that we would prefer to use State and local governments' own laws and procedures for spending funds.

I think, in some instances, it should have probably read "State and/or local," because what happens is that we come back to a fear which may or may not be real. That is, the State, through its procedures—the kinds of things Suzanne has just described and the kinds I could describe for you—puts on us a burden which is greater than that of the Federal Government, if that is to be believed. I can tell you another one. I think it should be an "and/or" really.

Ms. **Muncy**. We are back to the situation where, in some cases, everything would be delightful and, in other cases, it would not be. We don't want the burden just shifted from the Federal Government to the State government by keeping a heavy handle on us at the local level. We are pretty sure the funds will not be forthcoming with the burden that is forthcoming. We will continue to be living with a heavy paperwork burden and there will be no relief.

Mr. **Joyner**. What I would like to do, Senator, is ask the NACo staff—Bruce and others—to think this through and get with your staff to work on that specific issue because I think it is important.

Senator **Durenberger**. All right. I will also submit a question on auditing. Let's move on to joint funding.

I am not as confident as you are that the provisions of the joint title will be sufficient to make this approach for simplification a success. I would like to examine the possibility of creating budgetary incentives for agencies that use joint funding. For example, increase their appropriations by the amount of the costs saved and assign personnel to joint funding implementation.

Can NACo provide, for the record, a list of the joint funding proposals made by counties, including a one or two paragraph history of each proposal.

Mr. JOYNER. We have that, Senator. We will get that to you.[1]

Senator DURENBERGER. That would be very helpful. In some previous hearings we had testimony about the use of budgetary incentives. We would like to take a look at the marketplace.

I have been looking for an intermediate mechanism between the Federal agency and the grant recipient—a mechanism that could make joint funding proposals which would benefit a variety of grantees. These wouldn't be the grantees' specific proposals, but combinations which could be of broader application.

Your idea about the State and local role in proposing block grants follow along the lines of this kind of thinking; is that correct?

Mr. JOYNER. I think so, yes, sir. We are completely compatible.

I think there was one point you started out with, the incentive program. I guess now I am going to have to step out of my role as a spokesman for NACo and speak as a single supervisor from a small county in Arizona and say that this is the kind of thing I personally would like to see, if the mechanism can be worked out.

Now again, Senator, I think we have a problem of how much proof we have to provide. If the paperwork becomes more onerous than the incentives, we can create a situation where we have developed a bureaucracy, in order to provide that we get more money, that adds to it.

I was chairman of our CETA consortium. We were always looking for bonus money. We had great fun doing that. We also added a few bureaucrats to run around and go up to our regional administrator in San Francisco to tell him how good we were in order to get the bonus money. I was never sure the bonus money was equal to the amount of administrative staff we hired. We could fall into that trap is what I am saying.

Senator DURENBERGER. The last point is in the form of a suggestion which relates to the cost of mandates. You could react to it in writing if you don't have readily available comments. At the present time OMB is preparing something called a regulatory budget. As soon as they are through with the regular budget, we will see it conceptualized better than it is right now. The concept is we should estimate the incremental cost of each regulation, the cost to each sector of our economy, and then cost-out a number of years into the future. These costs would be put in the form of a resolution which Congress would pass each year with limits set. Adjustments could be made from year to year.

We are a long way from implementing that kind of a process. But implementing crosscutting requirements for State and local governments as the identified regulation may be a good first step. What is your reaction.

Mr. JOYNER. I think that would be the case. In fact, I just participated in a fairly lengthy discussion this past Sunday on A-95, which is a very interesting crosscutting regulation—as I am sure you are aware—which gives us a great deal of trouble. I think that might, indeed, be the best place to begin with the crosscutting regulations.

---

[1] The information is retained in the subcommittee files.

We all share, I think, Senator, that concern which you are talking about. What is the true cost of a regulation? Is that going to offset the benefit which we allegedly get from the regulation?

This I think is one of the most heartening signs of the Reagan administration thus far, the determination to reduce the rules and regulations that have gone into the Federal Register. I don't know, but somebody told me they have been reduced by 50 percent over a comparable timespan of the preceding administration in the time that the Reagan administration has been in place. I don't know if that is a fact or not. It seems to me that if it happened, or anything close to it happened, it is again a very good piece of news that ought to be shared with the country—that we are reducing the regulations.

Now, as we reduce those, then there is a tendency, it seems to me—I am sure you can appreciate this, too—there is a tendency that countervailing pressures develop. The countervailing pressures comes along from a different kind of regulation. We say, yes, regulation A is onerous, but it is kind of like the racetrack talent. Right around the corner there is this good regulation that really won't cost you anything and serves the ends of justice and tranquility and peace and harmony and equity and all of those kinds of things.

My experience at, again, the local level with regulation is I cannot think of one single regulation that hasn't cost money and hasn't cost an addition to the bureaucracy, which is the same thing as money.

Senator DURENBERGER. Those who are proposing the concept of a regulatory budget know that, if we took the time, we could at least approximately cost-out a lot of the regulatory process and get some predictability to the way we approach those costs—whether it is by offsetting grants or something else. When we begin marking up this bill and dealing with the title on crosscutting, we are obviously going to have differences of opinion and some serious discussion. That will be an appropriate time for us to look at a logical way to budget for some of these things. Perhaps it may be appropriately added to this bill. If you have some specific recommendations on how to do this, we would appreciate having them within the next couple of weeks.

Mr. TALLEY. Senator, in trying to assist the subcommittee on this, you may be aware that for the last 2 years NACo, in confluence with the University of California at Riverside, has done what we consider to be a very good inventory by agency's program, of Federal regulatory burdens. That was completed about 6 or 7 months ago and runs into 7 volumes. Also, not only does it cover direct order but horizontal mandates. We would be glad to make that available to the staff and to assist in any way. There is also a summary form as well. As you can very well imagine—even on the crosscutting ones—just to relieve ourselves of those would be a tremendous burden.

To raise Conrad's point a little bit, the way the 504 regs are handled in some programs is, of course, very restrictive. How they are handled under revenue sharing, where some of the things are on a demand basis, seems to us to be a more logical approach to some of these types of activities as well.

Senator **Durenberger**. Thank you very much for your testimony. I appreciate your taking the time to be here.

Mr. **Joyner**. Thank you very much, Senator.

[The prepared statement of Mr. Joyner and letters to Senator Durenberger from Ms. Muncy follow:]

Prepared Statement of Conrad Joyner

Chairman Durenberger, and distinguished members of this Subcommittee, my name is Conrad Joyner. I am an elected county supervisor from Pima County (Tucson), Arizona, and I serve as chairman for governmental reorganization of the Association's Home Rule and Regional Affairs Steering Committee, one of twelve policy committees. In addition to my responsibilities as a public official, I am a professor of political science at the University of Arizona. It is with the benefit of my experiences as a local government official and a student of the intergovernmental system that I appear before you this afternoon. I am accompanied by Bruce Talley of the NACo staff, and Suzanne Muncy, the Intergovernmental Coordinator of Montgomery County, Maryland who is also a member of the NACo Board of Directors. Mrs. Muncy serves on the Taxation and Finance Steering Committee, the policy committee which jointly shares concern with matters dealing with intergovernmental reforms.

I come before you this afternoon to present the views of more than 3,000 county governments as a representative for the National Association of Counties on a matter of extreme importance and urgency—grant reform. Specifically, our remarks will focus on S. 45, "The Federal Assistance Reform Act of 1981," introduced by Senator Sasser, and the newly proposed legislation by Senator Roth, "The Federal Assistance Improvement Act of 1981."

Mr. Chairman, let me begin by thanking you and the members of this Committee for your serious and early consideration of this important matter. I stress early because too often in the past this or similar legislation has not received early and meaningful consideration by both Houses of Congress. It is our hope that your desire to move expeditiously on reform legislation will spur early consideration and enactment of a reform bill not just this congress, but this year. To that end, I wish to offer our sincere appreciation to both of the sponsors of the legislation under consideration today. Their long hard efforts and diligence to pursue this issue when Congress, as a whole, was not ready to give it the attention it so deserved, is recognized and appreciated by the Nation's county officials. In particular, I take this opportunity to extend a sincere thank you to Senator Sasser in obtaining Senate passage of S. 878, now S. 45, last Congress.

Senators, this is the third Congress that NACo has appeared before the subcommittee on this legislation. Mrs. Muncy, a witness at each of these appearances, and copies of previous testimonies found in the legislative history of S. 45 and its predecessors, can provide county officials' views on almost all the various components of both pieces of legislation. My testimony addresses some of our key concerns with the legislation, as well as issues which the subcommittee has specifically asked us to speak to. Both Mrs. Muncy and myself will be happy to answer questions on any particular title of the legislation not addressed in our written statement if you so desire.

GRANT CONSOLIDATION

Last year, NACo testified that the most important title within the reform legislation was grant consolidation. This afternoon, I reaffirm that statement. We in county government recognize the great need to consolidate nearly 500 active federal grant programs. Consolidation has been the keystone of NACo's policy on grant reform for nearly a decade. I do not believe that I need to argue the benefits consolidation offers, most particularly before the distinguished members of this Committee. They are a matter of record. It is becoming abundantly clear that consolidation is no longer a luxury, but rather the necessity of our times. The new Administration will move speedily in this regard. The question now becomes whether this title is needed, and exactly how the consolidation process should work.

I believe that each of us possesses enough political savvy to realize what has happened to our political process, and consequently, how any proposed consolidation plans will be received by the many special interests. As elected officials, we have the responsibility to operate all levels of government in a manner which is responsive to the peoples' needs, but at the same time is done with effectiveness, efficiently and economy. Consolidation of programs does accomplish this. And yet we have all witnessed what has transpired in the past when consolidations have been proposed.

Rarely have the plans been successful. Special interest lobby has ensured the continuation of very narrowly defined programs. In some cases, these were programs which were not proper candidates. In other cases, the consolidation packages were inappropriately designed. But even with the best of programs and with the best designs, many will oppose the consolidations the new President will bring to this Congress. It is for this reason that the Congress needs a process whereby consolidation packages can be appropriately evaluated and considered by their own merit. It is also for this reason that NACo believes that a strong process is required.

The consolidation process provided under S. 45, "The Federal Assistance Reform Act of 1981," is not strong enough. Last Congress, NACo fought to maintain the tough discharge procedures originally proposed. We believe that the discharge procedures are absolutely essential. Without them, committees may fail to act as we have seen too often in the past. The process outlined under the new title proposed in Senator Roth's "Federal Assistance Improvement Act of 1981," contains the strong discharge procedures so necessary to ensure that all congressional committees appropriately and meaningful consider the consolidation proposals. NACo endorses that stronger version. We urge that this subcommittee include the stronger language in the measure you report to the full committee. The intense pressure this subcommittee was placed under when considering this issue last year is a clear indication of the need. It also points out the necessity that Congress provide itself with a proper and workable structure in which it can seriously deal with all the important issues raised under each of President Reagan's, or any future President's, proposals. This title, then, is the heart of any reform attempts by this Congress, and we urge that this subcommittee place it as a first priority.

In response to the second part of my question, how the consolidation process should work, there really is no single one answer. Consolidations are very, very complex. There are many theories. The Advisory Commission on Intergovernmental Relations (ACIR) has its proposals, and certainly they provide a start. But I caution this subcommittee, the Congress, and the President not to take too simplistic an approach to this issue. Certainly consolidations save money in administrative overhead, and could save nearly $3 billion annually as a conservative estimate. It is also clear that consolidations can reduce Federal support in particular programs and thus help the Federal government in its efforts to balance the budget. We support these goals. But at the same time we must ask some very pressing questions. What programs would be included in the packages, and by what criteria? Would criteria be based on function or by client served? What programs would be eliminated all together? What funding levels would be established and would they provide adequately for the services assumed under the new program? What program requirements would be maintained, and what eliminated? Would consolidation, even with fewer dollars, coincide with a reduction in Federal mandates? Would consolidations force local governments to assume new or added responsibilities without the necessary resources, that is, would they simply shift the responsibility and the tax burden to local governments? Finally, the block grants are to be designed with the states as the primary recipient. What provisions would be made to ensure that local governments receive some of those dollars if the function is provided at the local level?

Some of these answers can be found in the process outlined by both reform bills under consideration. However, it is clear that the President will have a great deal of latitude in proposing consolidation programs as he or she should. We question whether the legislation under consideration today should limit the President to proposing only functionally related programs. How is "functionally related" defined? NACo believes that the President should have some flexibility in interpreting what is functionally related. In some cases, programs may be more feasibly designed based on client served, while in other cases, it may be more appropriate to consider only actual functions performed, such as nutrition.

Because the issues are so complex, and because consolidations should be considered on a case by case basis, we believe that no single, specific set of criteria can be established. Packages must be carefully thought out and applied on the basis of what will work. Remote Federal officials are not always in the best position to make that determination. It is for this reason that we propose a set of principles or guidelines in developing proposals. We would ask that the Congress consider these principles in reacting to consolidations under consideration.

The National Association of Counties, while we consider grant reform, including consolidation, the single most important issue before this Congress, request that the following be considered in any consolidation process:

1. That any consolidation plan afford state and local government officials a meaningful opportunity to design the program, not just react to a proposal. We are in the best position to tell the Federal level what will work, what requirements need to be

removed, and how the programs should be linked together. A special task force in each Federal agency, composed of elected state and local leaders, would prove most beneficial to the process. Consultation in the actual development is absolutely crucial;

2. That any consolidated program be clear, that is, that the functions to be performed and the requirements assumed under the new program are explicitly stated with all parties in agreement;

3. That any plan provide a transition period, or phase in, where local governments have the option to switch to the new program within a year's time. This option was provided in the reauthorization of LEAA and allows for those situations where the state government's spending is one year behind that of the national level. The option would alleviate the establishment of two separate programs in some states, and also grants state legislatures the necessary time to deal with any issues, such as inconsistent state laws, regulations or requirements, which might arise;

4. That local governments be granted a hold-harmless for those programs which they are already receiving aid;

5. That states be required to passthrough block grant dollars when the function is performed at the local level. States should be prohibited from passing on specific functional responsibilities previously supported by Federal dollars without providing the necessary resources;

6 That consolidated programs utilize state and local governments' own laws and procedures for spending funds; and finally

7. That the cornerstone of any consolidation proposal be simply this—to provide more flexibility to state and local governments with an absolute reduction in Federal mandates and regulations for a more efficient and effective government. No consolidation will shift program responsibility from one level of government to another with no real savings to the taxpayer or increased taxes to cover basic services.

I have spent a good deal of my time this afternoon on the consolidation issue because counties believe it to be of the highest priority. With your permission, I will now briefly address other components of the legislation under consideration.

AUDITING AND FINANCIAL MANAGEMENT

As we have in previous years, NACo endorses the audit provisions provided in both Senators' proposal. The legislation provides statutory authority to the single audit concept. We supported the Office of Management and Budget in its efforts to design and gain support for the single audit concept because we believe it rightfully concentrates on financial management control practices of the recipient, rather than on every dollar invested by the federal government. We are pleased to see the retention of language we proposed last year, specifically the continuation of the 100,000 figure as a threshold for the five year/three year audit restrictions. We commend the legislations' requirements which place greater reliance on state and local government procedures so long as they meet generally accepted auditing principles and standards.

Mr. Chairman, in making preparation for this hearing, we were asked by the subcommittee staff to address the issue of the Governmental Accounting Standards Board (GASB).

The National Association of Counties presently has no official policy on GASB. Earlier this year, we joined with the other Big Seven Public Interest Groups in formulating an inter-PIG Task Force to develop a common proposal on GASB. On May 4 and 5 of this year, we will be participating in special hearings in Philadelphia. We hope at that time to have developed a set of principles and alternatives to some of the proposals we disagree with. Once a formal policy has been established, we will notify your subcommittee staff. I can tell you that we recognize the problem that not all county governments are presently meeting generally accepted principles and that auditing or financial management principles should be applied uniformly for all local governments. There is a problem of local government capacities and staffing capabilities based on the government's size and wealth. We realize that the National Council on Governmental Accounting will require far more support and far more money to ensure that all local governments meet the standards. Hopefully, our inter-PIG Task Force will shortly be in a position to offer alternatives which responsibly and fairly address these issues.

STANDARDIZATION OF NATIONAL POLICY REQUIREMENTS

As presented to this Committee before, standardization of cross-cutting, or national policy objectives, is of immense concern to our counties. On one hand we believe the continued growth and variation under each of these requirements must end, while on the other hand we recognize the need for flexibility. The word standard alarms us because we do not believe that one standard will fit all needs for all governments and all federal programs. We appreciate this Committee's response to our concerns, particularly the authors of this legislation. We believe the language used under the definition of national policy assistance standard—specifically—"substantially uniform among affected assistance programs and is designed to take into account characteristics of classes of recipients or types of assistance"—addresses this problem and we ask that it be emphasized in your subcommittee report to ensure that agency regulations reflect this concern.

NACo wholeheartedly endorsed the certification requirement, and we urge that the subcommittee retain this important provision in legislation reported to the full committee. Certification is presently being done with such requirements as 504. Most counties have found it to be successful. However, specific care should be taken to ensure that agencies accept the certification of the lead agency without adding any new provisions to the requirement.

Because cross-cutting requirements are the fastest growing and most costly of all federal mandates, NACo recently completed a small survey study of what counties deem the most burdensome of the 59 cross-cutting requirements identified by the OMB study under Public Law 95-224. Davis Bacon and the 504 requirements were cited the most often in the socio-economic category, while A-95 and FMC 74-4 topped the list in the administrative/fiscal category. Criticisms commonly shared were the high costs of compliance with particular emphasis on ambiguous and conflicting policies of federal agencies. It is important to note one particular observation from that study. In completing the survey, NACo staff had to spend considerable amount of time discussing the various requirements with each of the participating counties. The report states, "it is clear from this exercise that counties, regardless of size, staffing ability, or sophistication, have great difficulty understanding the requirements and realizing their full impact. The cumulative effect has forced counties to come to know these requirements on a somewhat superficial basis with very few of the requirements fully mastered. These findings seem to point out that the implementation of these requirements cannot be fully satisfied because of the enormous cumulative burden they place on local administration . . . the inability to implement them raises serious questions as to whether such requirements benefit anyone or serve any major useful purpose that could perhaps be better accommodated through another means."

NACo believes that lead agency guidelines should be extremely broad. Each recipient should be able to flexibly meet those guidelines through design of its own means or program. The findings of our small survey study on this matter seems to support our views that over-perscription of how to meet national policy requirements serves no useful purpose, and in fact, in many cases, reduces rather than improves the services the government provides.

INTEGRATED GRANT FUNDING

The integrated grant funding section will amend and strengthen the Joint Funding Simplification Act. That act was well intended, but has not worked. NACo knows of no one example of a jointly funded project in county government as a result of the passage of the Joint Funding Act. In fact, Shelby County, Tennessee tried for four years to get a jointly funded social services project funded and was totally unsuccessful. Federal agency personnel refuse to accept the procedures or requirements of another as a substitution of their own. The basic problem rests with the fact that no one in the federal government has been committed to make this process work. Instead, they, federal officials, have allowed one roadblock after another to stand in the way. Joint funding can and should work. It is a means to save on administrative costs and substantially reduce government personnel. The provisions of this legislation reduce many of the barriers. With the barriers removed, the incentives to make better use of joint funding may not be necessary. Certainly the joint management fund is a start in the right direction. You may ask who should propose the programs. Again, remote federal officials cannot always design programs and know what will work. At the same time, commitments must be shown at the federal level to achieve wide use of the joint funding concept and acceptance. For these reasons, packaging of jointly funded projects should be done at the local governments' initiative, as well as at the federal level.

MISCELLANEOUS TITLE

Next to the consolidation and auditing titles, counties consider the various provisions contained under this title to be of utmost importance. We wholeheartedly support the provisions included in this title referred to as Local Governments' Bill of Rights. Specifically, we believe that the regulatory flexibility clause is essential and strongly urge that this subcommittee include it in final legislation. We support OMB analysis of the administrative costs associated with federal assistance programs. However, we urged that the costs local governments bear in implementing federal programs be considered as an essential component in determining the true administrative costs of federal programs. To determine only the administrative price tag on the federal level would severely distort the actual government dollars expended on administration and would not accurately depict the waste or duplication in managing federal assistance programs.

SUNSET

And finally, proposed legislation by Senator Roth included a new title which provides for Sunset. NACo has a long standing policy in support of the sunset concept on a five-year cycle basis. Our policy committee has not been able to review the procedure outlined in Senator Roth's proposal. In concept, we can endorse it. However, we will need to anaylze the specific provisions in order to fully endorse the process outlined by his legislation. Once that analysis is completed, we will forward additional comments to the subcommittee staff for your review.

CONCLUSION

This concludes our prepared remarks. I take this opportunity to thank you, Chairman Durenberger, and the members of this Subcommittee, for your consideration of this important issue, and for granting us the opportunity to present the county viewpoint. I reiterate, county governments believe that intergovernmental reforms, particularly consolidation, is one of the most important and crucial issues before this Congress. We also believe that, together, it is our responsibility to sort out the good and the bad of our intergovernmental system. It is a responsibility that our citizens will no longer allow us to ignore. More importantly, the fiscal conditions of all governments can no longer withstand the stress. We must consolidate programs, we must streamline the grants system, we must reduce government regulations and we must eliminate government mandates. You and I and even the President cannot do this alone. We must work together.

As I stated earlier in my testimony, this is the third Congress that NACo has appeared before this Subcommittee not only on this issue, but on this particular legislation. Modifications have been made. Years of work and hard efforts have been put into it; and yet, we still fight for passage. On behalf of the Nation's county governments, I ask that each member of this Subcommittee, and the members of the full committee, make passage of this reform legislation a personal crusade. Talk to your colleagues in the House of Representatives. Seek and get their support. We must move this legislation through the House or as in the past, our efforts will fail. The Public Interest Groups cannot get this legislation passed alone. The Senate must take the leadership. You, Senators, must specifically and personally campaign on its behalf. The time is ripe. I offer you the support and assistance of the more than 3,000 county governments in the United States and pledge the firm commitment of our national association to work with you to achieve these reforms.

Thank you.

MONTGOMERY COUNTY GOVERNMENT
Rockville, Md., June 3, 1981.

Re Grant Reform S. 45.

Hon. DAVID DURENBERGER,
U.S. Senate, Subcommittee on Intergovernmental Relations, Committee on Governmental Affairs, Washington, D.C.

DEAR SENATOR: I wish to thank you for allowing me to participate in the grant reform hearings of the Subcommittee on Intergovernmental Relations, March 11th.

At this point in time with the Reagan Administration's efforts at block granting, it seems imperative that, the grant reform legislation be enacted. The obvious question is likely to be that, with the recent proposals, the reform legislation is not necessary. However, I think that it is important that the legislation set the stage around which the various block grant proposals would be molded, and will hope that the Senate moves expeditiously towards passage.

As a part of your hearing remarks, you mentioned that you agreed with us that ". . . state and local governments should play a part in designing consolidations." As an urban county, we are most interested in participating in the process of block granting and consolidation. As part of our current effort, the enclosed document was prepared as a blueprint for action. I hope that you will find it of interest.

If I can provide you or the subcommittee with any additional information, please feel free to ask.

Cordially,

SUZANNE H. MUNCY,
Intergovernmental Coordinator.

Enclosure.

BLUEPRINT FOR A COORDINATED RESPONSE TO FEDERAL BLOCK GRANT AND CUTBACK PROPOSALS

(By Charles W. Gilchrist, County Executive)

SUMMARY

President Reagan has proposed the formation of block grants as a part of his overall plan for cutbacks in the federal budget. From information gathered, it is indicated that there may be fifteen block grants formed from existing categorical grant programs. These categoricals consist of programs to state governments, local governments, and individuals. The Reagan proposal is to take similar programs and block them into one program area with the recipient being a state government.

This paper is a blueprint for a response to the proposed change by the federal government of certain categorical grants-in-aid programs to block grants. The response presents an alternative approach to the awarding of block grants to states by proposing the creation of block grants for local governments in some areas. Health and social services are the two areas of focus at this time for the proposed alternative to local block grants.

[Resolution No. 9-1252 of County Council for Montgomery County, Md., Introduced April 28, 1981; Adopted April 28, 1981]

PROPOSED FEDERAL BLOCK GRANTS AND STATE FISCAL REDUCTIONS

Whereas, President Reagan has recommended a restructuring of the federal grants-in-aid system; and

Whereas, the Administration proposal contains the abolition of certain categorical grants and the creation of functional block grants; and

Whereas the federal initiative seeks to reorder the participation in the current intergovernmental system of federal, state and local governments; and

Whereas, the integrity, responsibilities and efficiencies of the various levels of governments should be protected, and this concept should be the cornerstone of any changes to the grants-in-aid system; and

Whereas, the effects of the creation of functional block grants will be felt beginning October 1; and

Whereas, the effects of fiscal reductions by the State of Maryland will be felt July 1; now, therefore, be it

Resolved that the County Council joins with the County Executive for Montgomery County, Maryland, in supporting a coordinated response to proposals for federal block grants and state fiscal reductions, and will work jointly with other public and private agencies to produce an orderly, rational, and equitable transition, ever mindful of governmental responsibilities and human needs.

A True Copy.

Attest:

ANNA P. SPATES, *Secretary.*

CURRENT SUMMARY OF KNOWN FEDERAL BLOCK GRANT PROPOSALS

U.S. Department of Education

1. State education block grant—includes 35 existing categorical grants funded at $714 million for fiscal year 1982 compared to $892 million for fiscal year 1981.
2. Local education block grant—10 existing categorical grants funded at $3.64 billion for fiscal year 1982 compared to $4.5 billion for fiscal year 1981.

Title I grants for disadvantaged students.
Education for the handicapped.
Desegregation aid.

U.S. Department of Labor

3. CETA block grant to State and local governments—includes 3 categorical programs: (1) Youth employment and training programs; (2) youth community conservation and improvement; and (3) title II—B and C.

U.S. Department of Health and Human Services

4. Health services block grant: community health centers, migrant health, home health services, maternal and child health, hemophilia, sudden infant death syndrome, emergency medical services, mental health services, drug abuse project grants and contracts, drug abuse state formula grants, alcoholism project grants and contracts, alcoholism formula state grants, $1.138 billion for 15 program areas.

5. Preventive health services block grant: hypertension, health incentive grants, risk reduction and health education, venereal disease, immunization, fluoridation, rat control, lead-based paint poisoning, genetic disease, family planning, adolescent health services, $260 million for 11 programs.

6. Social services block grant: title XX social services, day care, state and local training, child welfare services, child welfare training, foster care, child abuse prevention and treatment grants to states, adoption assistance, developmental disabilities, runaway and homeless youth, rehabilitation services, and poverty programs of CSA (except economic development), $3.8 billion in fiscal year 1982 for 12 programs compared to $5 billion for fiscal year 1981.

7. Energy and emergency assistance: crisis intervention programs of CSA and HUD and the fuel assistance program, $1.4 billion for fiscal year 1982 compared to $1.6 billion for fiscal year 1981.

U.S. Department of Housing and Urban Development

8. Community development block grant—includes 2 new program areas funded at $4.1 billion for fiscal year 1982 compared to $4.64 billion for fiscal year 1981.
Urban development ACTION grants.
Weatherization.
Shifting administrative responsibility to the States during fiscal year 1982.

9. Housing assistance block grant—includes Section 312, 8, 235, 236, 202 and Public Housing.

10. Small cities block grant to States.

U.S. Department of the Interior

11. Indian block grant—10 existing programs funded at $121.5 million for fiscal year 1982. (Includes supplemental educational assistance.)

U.S. Department of Transportation

12. Highway block grant—includes 14 programs.
13. Airport block grant—includes 2 programs.

Miscellaneous

14. Aging services—nutritional assistance.
15. Environment block grant.

CONCEPTS FOR CONSTRUCTIVE REVIEW

I. Federal reforms are necessary and desirable provided that they result in an intergovernmental structure that functions as a partnership to meet critical national, State and local human needs in an economical manner.

II. Local governments are closest to the people and are, therefore, likely to experience the greatest pressure and impact as a result of proposed federal cutbacks.

III. Local governments have the least ability to tax because their powers to tax are derived from the State and historically their primary tax revenues have come from the property tax.

IV. Program priorities should be set by that level of government best able to deliver services.

V. Block grants are a viable alternative to certain categorical grants provided that: Programs are rationally clustered into blocks; funds are channelled directly to that unit of government responsible for delivery of the program or service; allocation decisions are made by local general purpose governments based on community needs and priorities and citizen input; the criteria is equitable for allocating the fiscal resources; the level of overall cutbacks can be accommodated with minimal change through the elimination of administrative red tape and mandates, and with productivity improvement and adjustments to service levels; the transition is staged so as to avoid administrative disruptions, fiscal adjustments, and interruptions of service; and local governments are not expected to finance with property taxes essential services that involve direct payment to individuals—such services are only supportable through progressive income taxes, and are best administered at the federal level, and to a lesser extent the State level of government.

APPROACH TO DEVELOPMENT OF VIABLE LOCAL POSTURE

I. Get big picture and assemble available data on current federal proposals for block grants (type, composition and proposed funding level).

II. Based on current operating practices of State and local governments, assess for each proposed block grant whether it can be most effectively and economically administered at the State level or locally.

III. Where programs are "blocked" in such a way as to make a reasonable determination impossible: Separate block grants into State functions and local functions; and rearrange grants into blocks that are reasonable and manageable.

IV. Group block grants into State cluster and local cluster.

V. Identify those "blocks" within each cluster, the funding for which is likely to impact local programs significantly.

VI. For "blocks" in State cluster directly relevant to local well being, assess: Total Federal revenues which now reach the State for programs in block; total State revenues required to match Federal funds; State revenues now voluntarily committed to supporting programs within block; funds now flowing into locality as a result of current distribution practices; equity of State allocation system; nature of allocation system which could be mandated in federal enabling legislation which would be most likely to result in an equitable allocation of the scarce federal resources; likely funding level to State under current authorization and appropriation levels; likely local funding level, within that level, under current and alternate funding schemes; likely impacts of proposed Federal authorization and appropriation levels on local programs under current allocation system and alternate allocation system; and level of cutback which can be sustained without crisis and can, therefore, be supported and conditions of support (such as acceptable passthrough or match provisions).

VII. For "blocks" in local cluster, assess: Total Federal revenues which now reach the locality for programs in block; total State revenues required to match Federal funds; State revenues now voluntarily committed to supporting programs within block; funds now flowing into locality as a result of current distribution practices; equity of Federal allocation system; adjustments to Federal allocation system which would improve equity of distribution system; likely funding level under current authorization and appropriation proposals; likely local funding level as proportion of whole and a ratio of current allocation and alternate funding levels; likely impacts of proposed Federal authorization and appropriation levels on local programs under current allocation system and alternate allocation; and level of cutback which can be sustained without crisis and can, therefore, be supported together with conditions of support (such as manageable funding level or essential formula adjustments).

VIII. Identify critical State and local block grant proposals for future emphasis.

IX. Consider staging most likely to result in successful transition (what can go this fiscal year; what should be deferred 12/18 months for orderly transaction; and what is now up for reauthorization).

X. Identify affected public and private interest groups.

XI. Build a coalition around proposed State and local blocks, formulas and funding levels.

PRELIMINARY CUT AT STATE VERSUS LOCAL BLOCK GRANTS

Federal proposal—Preventive Health Services—$260 million, fiscal year 1982

Family planning.
Fluoridation.
Immunization.
Venereal disease.
Health incentive grants.
Hypertension.
Risk reduction and health education.
Rat control.
Lead-based paint poisoning.
Genetic disease.
Adolescent health services.

Health services—$1.138 billion, fiscal year 1982

Community health centers.
Black lung clinics.
Primary health care.
Primary health care clinics.
Migrant health.
Home health services.
Maternal and child health.

Grants to States.
SSI payments to disabled children.
Hemophilia.
Sudden infant death syndrome.
Emergency medical services.
Mental health.
Substance abuse grants and contracts.
Drug abuse State formula grants.
Alcoholism project grants and contracts.
Alcoholism formula State Grants.

Counter proposal—Local health services

Family planning.
Immunization.
Venereal disease.
Hypertension control.
Risk reduction and health education.
Rat control.
Adolescent health services.
Lead-based paint poisoning.
Home health services.
Maternal and child health.
Mental health.
Emergency medical services.

State health services

Fluoridation.
Health incentive grants.
Genetic disease.
Community health centers.
Black lung clinics.
Primary health care centers.
Primary health care.
Migrant health.
Hemophilia.
Sudden infant death syndrome.
Substance abuse grants and contracts.
Drug abuse State formula grants.
Alcoholism project grants and contracts.
Alcoholism formula State grants.

SSI payments to disabled children should remain with social security and Federal administration.

Energy and emergency assistance—$1.4 billion, fiscal year 1982

Emergency assistance under Social Security Act—HHS and CSA.
Low-income energy assistance.
Home energy costs.
Low cost weatherization.
Temporary financial.
Emergency medical care.
Emergency social services.

Social services—$3.8 billion, fiscal year 1982

Title XX social services.
Day care.
State and local training.
Child welfare services.
Child welfare training.
Foster care.
Child abuse prevention and treatment.
Adoption assistance.
Developmental disabilities.
Runaway and homeless youth.
Rehabilitation services.
CSA poverty programs.

There should not be a block grant for energy and emergency assistance.

All weatherization programs should be a part of community development block grant.

All energy emergency assistance should be a part of social services.

Local social services

Title XX social services.
Day care.
Local training.
Child welfare services.
Child welfare training.
Foster care.
Child abuse prevention and treatment.
Adoption assistance.
Runaway and homeless youth.
CSA poverty programs.
Home energy costs.

State social services

State training.
Developmental disabilities.
Rehabilitation services.
Child welfare training.

Estimated Federal program dollars to the State of Maryland by select human services programs 1981

	Federal dollars
Integrated Cleft Palate Clinic	25,000
Family Pediatric Clinic—Sinai Hospital	85,000
Clinic for Exceptional Child—University of Maryland	81,000
Pediatric Supervision of Epilepsy Clinic	80,000
Maryland Regional Congenital Heart Disease—Hopkins	50,000
Genetic Counseling—Sinai Hospital	45,000
Plan for Diagnosis, Treatment, followup PKU	45,000
314d health incentive	614,000
County allotments:	
Tuberculosis	43,901
Venereal Disease	26,236
GES and radiation	9,226
Maryland health planning and development	502,608
SSI/DCP formula grant to State (disabled child)	481,800
Immunization and surveillance	336,346
Maternal and child health and crippled children's services (2 programs are 50-50 funding and 3 are all Federal)	5,521,849
Refugee health program	478,728
State alcoholism plan	....
Genetics Services Act	....
Risk reduction and education	312,043
Diabetes program	154,960
Drug abusers, treatment and rehabilitation	2,153,387
Title XX	55,100,000
Lead-based paint poisoning	20,000
Genetics services	210,140
Family planning	2,730,000
Venereal disease	350,000
Hypertension control	449,166
MC	37,592

CRITICAL LIST

(Blocks, requiring detailed fiscal analysis, reordering, and heavy lobbying to get essential changes)

Reauthorization bills

CETA.
Community development.

New legislation

Local health services.
Local social services.
Local education.

The above three proposed new block grants request a restructuring of traditional Federal-State-local relationships.

The categorical grants in health, social services and education have historically gone to States, with some passthrough of funds to locals.

Needed is a financial breakdown of the fiscal impact of these programs using in the State of Maryland as an example.

STRATEGY FOR COALITION BUILDING TIMETABLE

Week of April 20

Goal: Local consensus.

Steps: Development of strategy; executive review; United Way review; council review; review with State delegation (ASAP); designation of mechanism for follow-up and coordination; and, refine and update analysis (structural, fiscal, temporal).

May 1 to 29

Goal: Maryland consensus.

Steps: Review with leadership of major localities; review with private providers and other United Way organizations; approach Governor if local consensus emergent; target areas of greatest concern; and refine and update analysis.

June 1 to 19

Goal: Coalition building nationally for targeted block grants.

Steps: Outreach to jurisdictions and organizations by most appropriate participant in Maryland coalition; delineation of network and designation of liaison; and refine and update analysis (structural, fiscal).

June—Ongoing

Goal: Affect Federal approach to block grants and funding levels.

Steps: Enlist support of Maryland congressional representatives; contact through most appropriate source congressional and executive staffers in key positions; enlist broadest congressional support through network; develop mechanisms for early review of legislative proposals and means of proposing changes; and enlist support of public interest groups.

LIST OF INTEREST GROUPS

League of Cities.
U.S. Conference of Mayors.
National Association of Counties.
International City Managers Association.
National Conference of State Legislatures.
Advisory Commission on Intergovernmental Relations.
United Way.
National Institute for Public Affairs/Public Administration.
National Urban Coalition.
Academy for Contemporary Problems.
National Education Association.
American Public Welfares Association.
National Urban League.
Maryland Urban Executives—Wm. D. Schaefer, Baltimore City; J. Hugh Nichols, Howard Co.; Lawrence Hogan, Sr., Prince Georges Co.; Robert A. Pascal, Anne Arundel Co.; Donald P. Hutchinson, Baltimore Co.; Charles W. Gilchrist, Montgomery County; J. Thomas Barranger, Harford County.
Fairfax County, Va.
King County, Wash.
Dade County, Fla.
Nashville-Davidson County, Tenn.
Los Angeles County, Calif.
Montgomery County, Md.

MONTGOMERY COUNTY GOVERNMENT,
OFFICE OF MANAGEMENT AND BUDGET,
Rockville, Md., June 18, 1981.

Re. S.B. 807.

Senator DAVE DURENBERGER,
Chairman, Subcommittee on Intergovernmental Relations, U.S. Senate, Washington, D.C.

DEAR SENATOR: I have reviewed Senate Bill 807, Federal Assistance Improvement Act of 1981, and wish to take this opportunity to comment on one section.

I would appreciate the Subcommittee's serious consideration for changing Section 601, as it changes Section 204 on page 47 of the bill: Standard Maintenance-Of-Effort Requirement. The section speaks to maintenance-of-effort (MOE) provision for two preceding years and a waiver under "extraordinary" fiscal hardships. It has always been an interesting part of the regulations that accompany grants. It is often confused with "Matching" requirements. The General Accounting Office did an excellent report on the topic, entitled "Proposed Changes In Federal Matching and Maintenance-Of-Effort Requirements For State and Local Governments," GGD-81-7, December 23, 1980.

These are difficult times for local governments with fiscal retrenchments, and State and Federal cutbacks. This provision places an unfair burden on us in determining local priorities and levels of services. It skews our decision-making authority and does not recognize a fundamental element. If many programs are working, the need for them should be diminishing. Yet the maintenance provision requires continuing fiscal increases of local governments. I would submit that a match requirement only would serve the purpose better and more efficiently.

The waiver provision is vague. What is an extraordinary fiscal hardship? I submit that we are all now in this situation of fiscal hardship. But, that the increased paperwork and burden of proof associated with a waiver lies heaviest with local governments. Surely with the Reagan Administration initiatives and grant philosophy this whole provision is illogical and improper. It is an unnecessary mandate.

As a representative of local government, I would like for the federal government to use only matching requirements on grants, and to delete all requirements for maintenance-of-effort. Therefore, I recommend that Section 204, lines 9 through 16, remain, but that the remainder of the Section be deleted.

Cordially,

SUZANNE H. MUNCY,
Intergovernmental Coordinator.

Senator DURENBERGER. Our next witness will be Eldon Stoehr, legislative auditor for the State of Minnesota. Also, as referred to earlier, he is chairman of, most appropriately, the State Auditor Coordinating Committee. In the past the coordinating committee has worked closely with this subcommittee on grant reform legislation. During the 1979 hearings, Frank Greathouse from Tennessee—who was then chairman of the coordinating committee—provided testimony on S. 878.

Eldon, I want to welcome you this afternoon and thank you very much for agreeing to come to Washington for these hearings.

Mentioning the word Tennessee reminds me that Senator Sasser has been detained and probably will not be able to attend the subcommittee meeting this afternoon. His statement on this subject will be entered into the record at this time.

[Senator Sasser's opening statement follows:]

OPENING STATEMENT OF SENATOR SASSER

Mr. CHAIRMAN. I am pleased to be here this afternoon to testify on S. 45, the Federal Assistance Reform Act of 1981. As you know, this is legislation shaped by the Senate Governmental Affairs Committee during the 96th Congress. And it unanimously passed the Senate on December 1, 1980.

I think that it is important to make the point that S. 45 is a piece of legislation which has been carefully and closely considered by both the Subcommittee on Intergovernmental Relations and the Governmental Affairs Committee. Its provisions have been commented upon by Governors, mayors, county officials, State legislators and council members. Other points of view have been presented by teachers, representatives of nonprofit organizations, lawyers and consulting engineers. And Members of Congress have had an opportunity to assess the potential impacts of enactment of this legislation.

The reason that I think that this point is important is because of the focus of attention that the system of federalism is getting just now. There is a lot of talk about "returning authority to States and localities," and instituting the "new federalism." Taken on their face, I believe that we are all supportive of these concepts.

However, we must take heed lest the first steps toward less Federal intervention call forth a complicated set of intergovernmental fiscal problems which haven't been weighed in the balance in the course of the decisionmaking. For example, in giving greater flexibility to State and local officials we don't want to suddenly cause a large new share of expenditures to be met by these levels of government.

I believe that the enactment of S. 45 will allow a gradual movement in a new direction for the Nation's intergovernmental system. This legislation represents a responsible approach to instituting a new Federal policy without suddenly shifting the burdens of the intergovernmental system to another level of government.

This bill addresses the most fundamental problems of today's intergovernmental system. First, it offers a means of making some sense out of the current welter of over 500 overlaping, duplicative, narrow categorical grant programs through consolidation. Second, it promotes the efficient use of audit resources. Third, it encourages Federal agency support for administrative consolidation of grant programs. Fourth, it encourages the simplification and standardization of national policy requirements attached to grant programs. And it makes several other changes designed to provide grant recipients better information about grant programs and greater access to agencies making grants.

Title one of this bill would encourage timely congressional consideration of plans submitted by the President to consolidate categorical grant programs. This would "get at" one of the major problems affecting the management of grant programs. That is, the sheer number of small grants. For instance, in fiscal 1980, 450 of the approximately 500 categorical grant programs delivered only 10 percent of the Federal aid. However, the paperwork burdens accompanying this aid probably caused 90 percent of the headaches for officials running the programs.

Hand-in-hand with this legislative consolidation effort is the administrative "consolidation" achieved by a strengthened jointly funding process. Under the latter authority, recipients of grants could negotiate, on a case by case basis, with the Federal agencies to jointly administer certain programs. This would mean that the recipient would get many of the benefits of consolidation, such as reduced administrative requirements. But the program would be tailormade to the specific situation of the grant recipient.

Both of these approaches to consolidation of grant programs would reduce the cost by lifting administrative burdens on recipients. However, experience has shown that such benefits are realized slowly, over a long period of time. As administrative costs for auditing, application and reporting are reduced, more and more money can be returned to the Federal coffers or spent for program needs.

Sudden cuts and quickie consolidations may have the unwanted effect of shifting the burdens for paying for the programs to State or local governments. Again, S. 45 is a well-thought-out reform measure, which takes into account such impacts. It has the support of Governors, mayors, legislative officials and others concerned with State and local government issues.

I think it deserves serious consideration as the vehicle for achieving the rational, orderly grant system that we all envision when we talk about "new federalism" issues.

The problem of piecemeal, grant-by-grant auditing, which has proved disruptive to recipient organizations, is addressed by title two of S. 45. This title would establish by statute consistent requirements for financial audits of Federal assistance programs run by State and local governments and nonprofit organizations. Under the provisions of this title, recipients of Federal aid would be responsible for obtaining independent financial audits, by qualified auditors, for their organization once every 2 years.

Legislation establishing the single audit for Federal assistance was passed twice by the Senate during the 96th Congress. As title two of the Federal Assistance Reform Act this measure passed on December 1, 1980. And it was passed again on December 9 as an amendment to the State and Local Fiscal Assistance Act. Unfortunately neither of these Senate-backed measures were given House approval.

However, there is good reason for the Senate support for the single audit concept. It would save money, institute efficiency in auditing, and give the responsibility for the audits to grant recipients. I believe that final passage of this measure by the Congress during this session would be a real step forward for the efficiency of the administration of Federal grant programs.

As I mentioned earlier, the number of categorical grant programs multiplied rapidly over the past two decades. Since 1960, in fact, Federal aid to States and localities has multiplied 11 times. Along with this growth in the number of grants, the number of "strings" attached to Federal grant programs has also mushroomed.

Title four of S. 45 addresses the problem of cross-cutting requirements, which protect the environment or the economy or achieve some other national priority set by Congress. The goals of these requirements are laudable. However, the manner in which these goals are achieved needs some straightening out.

S. 45 gives the President the authority to designate a single agency to coordinate the development and implementation of each generally applicable requirement. This means that these standards will be substantially uniform for all grant programs.

The recipients administering the programs will know what is expected of them in compliance with these requirements. And the Federal Government can more readily monitor compliance.

These reforms in the management of the Federal categorical grant system could be put into place if S. 45 is enacted. This bill gives us an opportunity to do the things we say we want to do to improve the Federal system. It is a tangible effort to cut the strings on Federal programs and transfer more authority for running them to mayors and Governors and other officials throughout the country.

However, this return of more decisionmaking power to State and local governments is not done without a plan. Much time and thought and effort has gone into designing this legislation so that it will give more flexibility to State and local governments without dumping a new fiscal burden on them.

S. 45 is a blueprint, a design for action. It has to be implemented by officials at all levels of government who are committed to its principles. It is based on extensive research by the Advisory Commission on Intergovernmental Relations. And it incorporates the suggestions of a variety of actors in the intergovernmental system.

Mr. Chairman, I hope that the subcommittee will see fit to pass this legislation early in this session of Congress. Thank you very much for this opportunity to testify.

Senator **Durenberger**. Eldon, we are ready for your statement.

TESTIMONY OF ELDON STOEHR, LEGISLATIVE AUDITOR, STATE OF MINNESOTA

Mr. **Stoehr**. Mr. Chairman, it is a pleasure for me to have a chance to speak to your subcommittee. The State Auditor's Coordinating Committee is very appreciative that you get our input as these things come along.

I have submitted a written statement, but with your permission I won't read that but would like to have it entered into the record.

Senator **Durenberger**. It will be made a part of the record following your testimony.

Mr. **Stoehr**. As you mentioned, the State Auditor Coordinating Committee is the means by which State auditors attempt to coordinate and further the purposes of the National State Auditors Association. We represent the post audit and program evaluation functions of all 50 States.

Originally SACC was set up to facilitate participation of State auditors in the National Intergovernmental Audit Forum, but we found it very beneficial to enlarge our scope to react to the various Federal legislative and regulatory proposals and actions that are taken. That brings us here today.

As you mentioned, at the last session Mr. Greathouse, on behalf of the same organization, did speak to this subcommittee on the same subject. We were very gratified that the subcommittee and the Senate at large acted favorably not only on S. 45, which was S. 878 1 year ago, but additionally recognized what we consider to be the merit of the auditing and accounting title, which was title II then and I believe still is now, by amending the revenue sharing bill by adding title II. We appreciate your sharing the priority and the need for that action.

We think that the need for congressional action on this subject is even greater now than it was 1 year ago and before that, because with the delays, the problems become more difficult to deal with.

The people who preceded me today spoke and reflected on the fact that everyone seems to agree on the desirability of grant reform and we are addressing particularly the auditing aspects of grant reform. The benefits are fairly obvious, and people address those benefits regularly with the single audit concept that is embodied in S. 45, which would improve the audit performance. It would reduce the negative impact on the auditees who receive the benefit of our services. It certainly eliminates duplication and thereby expands the total audit coverage we can get with a fixed number of auditors.

The Office of Management and Budget established a single audit policy in October 1979 when they issued attachment P to OMB Circular A-102. That should have resolved our problem because it seemingly institutionalized the process. But despite that, the various processes that are required to achieve the benefits simply haven't been implemented.

It is the historic failure to successfully implement desirable policies and procedures that greatly concerns us and that makes us think it is even more important that Congress speak to this issue.

Since 1965, when OMB issued Circular A-73, as a result congressional disclosures of widespread deficiencies in auditing, we have observed a pattern of discussion—JFMIP studies, critical reports from the GAO about the performance, Presidential memos and even congressional hearings on this subject. They all agree on the problem and generally on the solutions, but at this time—15 or 16 years after the fact—it is still "business as usual" and the problems are still with us.

If it appears that we are unduly critical of OMB in what we say, we would like to point out that that is not our intent. We basically agree with everything that OMB is saying. It is the failure to implement the policies and procedures that frustrates us.

We do realize that the ultimate implementation really rests with the line auditing agencies as they are represented in the various Inspectors General offices. They need to be brought around, too.

But having said that, we are still compelled by the experience of the last 15 years to concur with the Comptroller General in his observation in a 1979 GAO report that we do mention in our written testimony, and to quote him:

> Although the intent of these OMB policies is clear and laudable, our review shows that agencies generally have not implemented them. Moreover, they do not provide the overall direction and stronger measures that are now needed to institute the single audit approach.

The failure to follow through on the second most important recommendation of the 1979 JFMIP report seemed to continue the pattern of inertia. Their recommendation was,

> Implementation of a single audit requires the support of top governmental officials at all levels. Therefore, an interagency group must be established to help OMB implement the approach, and members should be appointed by the President.

And despite JFMIP's emphasis and the State Auditor Coordinating Committee's written urging, no action was taken for another 14 months. Then it was only after a delegation of auditors met with Comptroller General Staats that consideration seems to have been given.

Six months after that, in October of last year, we finally had a first meeting of the steering committee of the JFMIP. They are working on developing strategies and approaches to make the single audit concept work. At this time they still haven't drawn any conclusions about specific actions to be taken, but we are hopeful that they will.

Again, all of this leads us to conclude that not only was the Comptroller General correct in his statement, but the Senate Committee on Governmental Affairs report on last year's review of the situation was appropriate. That report said:

> Although the reforms initiated by OMB in auditing federally assisted programs are important ones, the House and Senate hearing records, along with GAO and JFMIP reports, show a lack of progress on the part of OMB in grant auditing. Enactment of title II of S. 878—which I believe is identical to S. 45 now—would make it clear that these reforms reflect not only the intent of Congress but the desires of the President.

Now we hope the subcommittee will again concur in that conclusion right now. It has been our experience, when we go back home after we all agree on the desirability of single audits, we work with people in the various regional audit agencies who have no functional awareness of the single audit approach. It is business as usual, with a mind set still toward grant orientation. We really need your support to get their attention.

Now there are a couple of points that are in S. 45 that we have no disagreement with but we would like to speak to briefly just to emphasize their importance and give a little interpretation of how we would like to see them come out.

On the subject of reimbursement, section 204(e) requires the Director of OMB to prescribe appropriate means for reimbursement of independent auditors making audits on behalf of the Federal Government, including provisions for direct reimbursement.

We believe that the only appropriate means of reimbursement is direct reimbursement. The alternative which we are aware of is for the State generally to recover audit costs as a part of the central indirect cost plan. But that simply doesn't work for State auditors. States are no more monolothic than the Federal Government. The prospect of a potential future recovery of costs that will accrue to the executive agencies rather than the legislative auditor, as most of us are—or even other forms of independent auditors, simply doesn't work. The States have tight budget constraints themselves right now. It is very hard to persuade a budget committee of the legislature that they should front end or establish the funding to accommodate Federal interests in our audit process unless we can clearly develop that we will indeed recover the costs that are directly associated with Federal requirements.

The bill is fine as it is written, but we would like to only emphasize the direct reimbursement aspects.

Quality review is another aspect that we think necessarily goes with this. I don't think you can separate the reliance that is absolutely essential to the single audit concept from a quality review process which demonstrates that the subject audit organization does, indeed, perform the level of audit work that we could all accept.

The OMB Director again is charged with the responsibility to establish and approve a quality review process that will do just that. It does require, in fact, that the Federal agencies must accept that work of any audit agency which has been approved pursuant to the process of OMB.

The National and State Auditors and the National Intergovernmental Audit Forum have been jointly establishing a quality review process. We think it is quite well along. We have developed formalized guidelines for uniform reviews. We have tested and refined them by actually reviewing, with those preliminary guidelines, eight States and two local audit organizations—including my own. We have refined the process with each test application. We are only disappointed that the Federal Government, which is supposedly a jointly participating member, hasn't participated. They have been somewhat reluctant to subject themselves to the process that we are developing. Nevertheless, we think that the process that we have is the only game in town. We certainly think it is ready for OMB to consider for the needs of the single audit concept.

Finally, we would like to conclude with a suggestion we have made before. That is also a recommendation in the JFMIP report of 1979. That recommendation was that a study be done by OMB to determine the feasibility of establishing a single Federal agency to be responsible for monitoring, overseeing, and auditing federally assisted programs. We think the evidence that we have gone over lightly, because we presented it to you before and it has been restated by others on the panel, is sufficient to expect that a positive conclusion concerning that central unit be reached—if not to do the central auditing of grants, at least to do the monitoring and overseeing, which is what we are calling "cognizance." We have found there are as many interpretations of policies and procedures of OMB and others as there are audit organizations. We simply don't think cognizance is working. While the decision to establish such a central function was deferred originally, I think it is time to take a look at it and act positively on it.

We think, finally, that if anything, the recent direction of the Federal Government gives added impetus to what we are asking. The emphasis on the detection of fraud, waste, and abuse needs to be complemented with the preventive aspects that auditing has in identifying internal control systems needs and other things that don't allow fraud to take place in the first place.

Finally, as we talk about block grants, it is even more essential that you take a look at integrated audits as compared to the old grant-by-grant and smaller organizational divisions in the application of audit resources.

On behalf of the State Auditor Coordinating Council and its parent, the National State Auditors Association, we certainly do appreciate being here again to repeat our plea. It is a personal privilege for me to be here. If I can answer any questions you might have, I would certainly like to do that.

Senator **Durenberger**. Thank you very much.

I will start my questions with some definitions. In the phrase "financial and compliance audit," what does the word "compliance" mean?

Mr. **Stoehr**. According to the standards for audits, that are promulgated by the Comptroller General and that are the generally accepted auditing standards for the government, compliance is really an integral part of the other more defined audit scopes. I think all auditing is compliance, either with financial considerations or the legal requirements or good management performance or achieving your intended purpose. But compliance is just "did they do what they were intended to do."

You can break down audit scopes into financial, economy, efficiency, and program results. Compliance is really integrated into all of these.

As compliance is used in Federal audit guides, it generally means "did the grantee agency obey the precise directions of the program." It is one thing I did not give OMB credit for earlier. In the past the compliance features of Federal grants-in-aid were contradictory and all over the place. OMB did review those, consolidate them, and restate those in such a way that they have, indeed, given us compliance guidelines to use when we do Federal grants-in-aid reviews that we think are manageable and workable. Federal compliance auditing is much less a problem today.

Senator **Durenberger**. In Minnesota, you audit all of the State agencies as legislative auditor. Is that correct?

Mr. **Stoehr**. That is correct.

Senator **Durenberger**. Is that an annual or biannual audit?

Mr. **Stoehr**. We changed our approach 2 years ago from an organizationally based audit of all State government to one where, for each of the last 2 years, we have audited the State as a single entity. We have done it annually the last 2 years. That is a financial and compliance review. We did give our auditors' opinion on the fair presentation of the financial statements as the Department of Finance issued them for the State as a whole. We issue management letters to all of the line agencies dealing with the various aspects of their performance, whether it is compliance or internal control or whatever it is. We capture the most salient aspect of what we tell agency management itself in a summary, an internal control report, to the legislature. The first year we had nine findings in this summary. We perhaps had that many this year. They are things that require State legislators to react or things that are sufficiently important that they would want to know even if it doesn't require immediate legislative action.

So that is our approach. It takes 65 percent of my total staff to do that on an annual basis. But the audit does, I think, comply with every aspect of the proposed single audit—except the Federal compliance component, which we have only done to the extent that not complying with the Federal requirement might generate a contingent liability for the State for recovery of costs by the Federal Government. But I did request staff in this year's budget to integrate Federal compliance interests into our State audit of Minnesota State government as a whole.

Senator **Durenberger**. In Minnesota, the elected State auditor—Arne Carlson—at the present time, does an audit for all local governments. Is that correct?

Mr. **Stoehr**. That is correct, Mr. Chairman.

Senator **Durenberger**. Can you explain how that audit work compares with the kind of audit work you have just described for State government? Can it be compared?

Mr. **Stoehr**. Yes. I do think, Mr. Chairman, it is comparable. It is just State government versus local government.

Arne has the responsibility to do counties, cities, and school districts on request. I don't get into his areas. He doesn't get into mine. He does use the same standards I use. His staff is very comparable to my own. I know that he has completed his first single audit of the Metropolitan Council. Rather than on a grant-by-grant basis, he has taken on the whole operation and looked at not only the interests of State legislators and how the council operates but also the Federal grantor interest. What we are doing, I think, is as comparable as any other two organizations might be.

Senator DURENBERGER. Is he doing each unit of local government on an annual basis?

Mr. STOEHR. His audit frequency is not annual. I believe that his target is to do the counties and the first-class cities annually, which I think are—just by Minnesota's definition—St. Paul, Minneapolis, and Duluth. Once you get past the major entities of local government, then it is done on request or on a less frequent cycle. I am not sure, since I don't work in that area, but I know it is not always annual. It is a 2- or 3-year cycle. In fact, some of the very small units at this point aren't required to have audits. Most of them do it as a matter of good management practice, but it is not the law.

Senator DURENBERGER. Is the State school district also on request?

Mr. STOEHR. It is on request. As a matter of practice, CPAs do most of the school audits.

Senator DURENBERGER. In Minnesota, is there any legal requirement that nonprofits receiving either State or local funds have an audit?

Mr. STOEHR. To my knowledge, the only legal requirement would be the covenants of the contract that grants the funds in the first place. I suppose that differs with each individual granting process. But there is not a State law that I am aware of that says they must. It does provide the legislative auditor with the jurisdiction to follow State money wherever it may go, whether that is into a nonprofit or jointly funded organizations, such as the regional development commissions and so on.

Senator DURENBERGER. Then, in your audit of State government as an entity, you are not including grantees of State funds—whether they be local government or nonprofit?

Mr. STOEHR. We have not as part of that audit gone into those. We use the rest of our year, when we are not doing that central audit of the State as a whole, to follow up on things that appear to be appropriately based on experience and legislators' interest. But we do not routinely follow into nonprofits.

The approach there seems to be to require, as a granting condition, that they secure an independent public accounting firm to make that audit.

Senator DURENBERGER. Is that a practice under Minnesota law?

Mr. STOEHR. I believe that is only a practice, not a law.

Senator DURENBERGER. Where do you get the standards by which you design your work? Are they in State law, or are they provided by some other level of government, or by some association that sets the standards?

Mr. STOEHR. The standards we use are the same that are used by all levels of government, in government and out. Those are the auditing standards of the AICPA. Those are integrated into the Comptroller General's standards for audit of governmental organizations, programs, activities, and functions. So the standard of the

GAO and AICPA are integrated together and the Federal auditors are required to use those. The State and local auditors subscribe to them and do use them as well.

These would be the only standards that I think are marketable. CPAs and other accountants who are doing other Government work would certainly be required to use and be governed by those standards. There are no laws per se about how you conduct an audit.

Senator **Durenberger**. In response to an earlier question, you made some reference to auditing compliance with requirements of Federal law. Do you do that on a regular basis? Or, is that one of those things that just comes up on a selective basis—where it is appropriate for a State agency audit to show whether or not they have complied with Federal law when they are spending Federal money?

Mr. **Stoehr**. Our central audit on a statewide basis focuses on fund structure, which is consistent with the standards. We have a special fund in Minnesota where all Federal funds are entered in and disbursed from. So we audit that fund. We look at the control and the processes of that fund. We do not get down to the same level of compliance features that I suspect a Federal auditor would with more programmatic interest.

As I think I mentioned, we only review specific noncompliance to the extent that such noncompliance would result in a material obligation back to the Federal agency on recovering costs.

Senator **Durenberger**. Under the single audit concept that is being proposed in this legislation, would auditors be taking on compliance audit responsibilities for specific conditions in Federal grant law? Would you be taking on more of an obligation than you presently incorporate into your audit?

Mr. **Stoehr**. I don't believe that my colleagues around the country would object to doing the compliance features and, in fact, probably are appropriately saddled with that responsibility. But there are some other considerations you know. The most important is probably provided for by S. 45 with the requirement that the Federal Government devise some mechanism whereby State auditors can reasonably expect to be reimbursed for those efforts that are exclusively done for Federal purposes.

It seems that, at the financial and compliance levels, audits are best done at the State auditor level where they are familiar with the agency process and systems. But once you get past that into the programmatic concerns, then I don't think that we are interested or particularly concerned. That is the area I see under the single audit concept that Federal agencies could come in and build on State's work. They would then address themselves to more programmatic reviews of how money is spent and probably investigate things that appear to need investigating.

Senator **Durenberger**. Could you do it for them with appropriate reimbursement?

Mr. **Stoehr**. I think there is no question we can do the compliance features, given reimbursement from the Federal Government, especially in light of OMB's clarifying restatement of consistent Federal compliance requirements.

Senator **Durenberger**. From what you know about Federal grants, how much similarity, or difference, would there be in auditing standards for compliance on a low-income fuel assistance grant versus a higher education grant?

Mr. **Stoehr**. I would expect that the financial management compliance would be very similar in terms of what constitutes custody of funds and the accounting process that goes with it. You are looking at different eligibility criteria. That is where the compliance would probably come in. The criteria of who is eligible for fuel assistance is very different from educational grants for specific purposes. But while they are specific and different, it doesn't require a whole new mind set or a different kind of auditor to pursue that. It is just a matter of becoming familiar with those specific features.

Senator **Durenberger**. Let me ask you about the cost reimbursement part of your testimony. We have two bills before us—one by Senator Sasser and one by Senator Roth. There are two differences between them. One, there is a TVA exemption in Senator Sasser's bill. They also differ in respect to cost reimbursement. Senator Sasser agrees with you on the point of direct reimbursement, whereas Senator Roth would allow an indirect reimbursement through grant overhead as well. Since you are such a strong advocate of direct reimbursement, how do you think that system would work? Would you send a bill to OMB every time you did an audit for the work which satisfies these Federal standards even though it is not required by State law? Just how would you see that direct reimbursement process working?

Mr. **Stoehr**. I haven't carefully structured it in my mind, but I think that it could go either way. Currently the agencies, the OIG's for the various departments in the Federal Government, are in one way or another absorbing the cost. A process or agency that does it very well from the States' perspective is the Department of the Interior. When programmatic moneys are passed down, there is an immediate set-aside—a percentage of the programmatic dollars—that are taken off the grant and put under the jurisdiction of the Inspector General for Interior. Then that Inspector General uses those funds either for his own staff to perform audits, or to pay for contractual arrangements with independent public accountants, or, through contractual or, other arrangements with State auditors, to arrange for those services.

The money is there. It is available and clean. You don't have to wait until after the fact when the money goes, as part of the total entitlement, down to the operating agency where they tend to spend it and then say, "We can't have an audit; we don't have any money left." But I think setting the money aside within the OIG's office in the various departments would seem to be more realistic than asking OMB to set aside a kitty someplace and have it billed directly there. OMB is less apt to know directly what kind of service was performed for them, whether it was satisfactory, or the time was reasonable and so on.

I think there still has to be some oversight by the Inspectors General of the departments, whether State auditors do it or someone else. I think the payment for services has to be kept with the oversight.

Senator **Durenberger**. Since this is one of the major differences between the two bills, any additional examples or suggestions, such as the very good one which you just cited, would be most appreciated.

My last question deals with this cognizant agency which you have mentioned. Are you suggesting that each grantee be assigned one agency for the audit function, and that other agencies which provide assistance to the grantee rely on the audit work of the cognizant agency? Is that the theory behind it?

Mr. **Stoehr**. The problem, as I mentioned earlier, is that each cognizant agency has a different interpretation. Right now Minnesota has 12 different cognizant agencies to deal with during our various audits, even though the work we do for them is embodied in one statewide audit. In our particular situation, it is clumsy and it doesn't meet the needs.

What we are suggesting is that, instead of having each department perform cognizance for its programs, where non-Federal auditors are doing Federal audit work, the negotiations on specific points—such as techniques to be used or questions on how reimbursement is to be handled—should be resolved by some central unit someplace, not a different unit in each Inspector General's department, where you get inconsistencies and contradictions and so on. We have had the present form of cognizance for 2 years and it really hasn't worked very well so far. We are not optimistic that it ever will, unless it is given some central focus. Whether that would be a separate agency or a separate unit such as within OMB or some other nonalined function of the Federal Government, we are really not sure. But the JFMIP report in 1979 dealt with this at length. That was a recommendation of that report.

Senator **Durenberger**. Thank you very much. I appreciate your appearing here today.

Mr. **Stoehr**. Thank you very much.

[The prepared statement of Mr. Stoehr follows:]

Prepared Statement of Eldon Stoehr

Mr. Chairman and members of the subcommittee, it is a pleasure and a privilege to appear on behalf of the state auditor community in support of S. 45. We are appreciative of this opportunity to add our voice to the chorus of voices from all levels of government seeking the Congress' assistance in implementing the single audit concept as proposed by Title II of S. 45.

THE ROLE OF THE STATE AUDITOR COORDINATING COMMITTEE

The National State Auditors Association, through the State Auditor Coordinating Committee (SACC), is the means for coordinating the postaudit and program evaluation functions of the fifty states. SACC came into existence to support state auditors as they participate in the activities of the National Intergovernmental Audit Forum. SACC has expanded its role to represent state auditors as they react to the federal legislative and regulatory processes.

STATE POSTAUDIT RESPONSIBILITIES

The postaudit function in state government is either statutory or constitutional, and is generally comparable to the role and authority of the Comptroller General of the United States and the General Accounting Office. State audit organizations have the responsibility for audit and/or program evaluations of the departments, agencies, and institutions of the entire state government as distinct from the internal audit of a single state agency. In many instances, the authority and the responsibility of state audit officials also includes the audit of local governments, and the establishment of accounting systems and procedures for the state and for the counties, cities, and political subdivisions within the state.

As an important component of the overall management and oversight systems of their state governments, state auditors, along with their state colleagues in other fiscal functions, have long advocated the need for greater rationality in the entire governmental fiscal system. Therefore, we are pleased to have this opportunity to express our strong support for improvements in federal grants-in-aid policies, systems, and procedures.

BASIC NEED FOR FEDERAL LEGISLATION WHICH MANDATES POLICIES TO IMPLEMENT THE SINGLE AUDIT CONCEPT

There does not seem to be any disagreement that the single audits called for by Title II would be enormously beneficial from several standpoints—they would improve audit performance, reduce the impact on grantees; and, by eliminating duplication, increase efficiency and expand the number of audits possible with a fixed number of auditors. What remains to be done is to actually implement the processes to insure this approach. This is and has been where things break down. The Office of Management and Budget issued Attachment P to OMB Circular A-102 approximately 1½ years ago, which called for most of what Title II of S. 45 requires. To date, there has been little implementation outside of a few pilot efforts. The JFMIP recently established a steering committee to develop strategies and procedures to implement Attachment P.

This sounds all too familiar to our group. We have observed a pattern over the past fifteen years or so of laudable policies embodied in circulars that have generally not been implemented. In 1965, OMB responded to disclosures by the Congress of widespread deficiencies in auditing federally assisted programs by issuing OMB Circular A-73. This called for reliance on audits made at the state and local level, coordination of all audits of grant programs administered under the jurisdiction of a single federal department, and cross servicing arrangements between federal agencies whereby one federal agency would conduct grant audits for another.

Nine (9) years later, in 1974, GAO reported:

"For the most part, however, benefits from coordinating Federal and State audits have been short of what is attainable."

"Even though they have substantial backlogs of audit work, most Federal auditors said they generally do not rely on State or local government audits because of the Federal Government's differing legal requirements, interests, audit guidelines, and reporting methods."

GAO recommended that GSA (which had assumed responsibility from OMB for Administration of Circular A-73) take positive steps (1) to promote the use of state and local audits to satisfy Federal audit requirements, and (2) to revise Circular A-73 to include procedures that would increase intergovernmental audit cooperation.

GSA responded that they strongly endorsed initiatives for improved intergovernmental auditing, and were prepared to contribute to that effort *to the maximum extent possible* (italic supplied).

In noting GSA's reply, GAO observed that "Success or failure will largely depend on the administrator's vigorous leadership."

Five more years passed and GAO again undertook a review to determine if OMB and Federal agency efforts to provide for grant auditing had been successful. The resulting report, "Grant Auditing: A Maze of Inconsistency, Gaps, and Duplication That Needs Overhauling," vividly describes GAO's findings. With respect to OMB's efforts to solve the problems that persisted so many years after Congress disclosed them, GAO said: "Although the intent of these policies is clear and laudable, our review shows that agencies generally have not implemented them. Moreover, they do not provide the overall direction and stronger measures that are now needed to institute the single audit approach."

My own personal observation and the feedback from my peers indicates that the personnel in most federal audit agencies who work directly with the states have very little functional awareness of the single audit concept called for in Attachment P, and tend to conduct "business as usual" in securing audits of federal grant recipients.

It is not my purpose to criticize the Office of Management and Budget circulars on this subject as inadequate. On the contrary, state auditors basically agree with the content and purposes of those circulars; we are disappointed only in the failure to implement them. We recognize that implementation is the primary responsibility of the operating audit agencies in the various federal agencies. We are convinced, however, that implementation requires the action of the Congress to mandate federal audit agencies to take the necessary actions.

ENDORSEMENT OF PROVISIONS OF S. 45

I would like to emphasize our support for, and the importance of, certain specific provisions of Title II of S. 45.

Reimbursement

Section 204(e) charges the Director of OMB to prescribe appropriate means for reimbursement of independent auditors doing audits on behalf of the federal government, including provisions for direct reimbursement. We believe that direct reimbursement is the only appropriate means of reimbursement. The only alternative to direct reimbursement is cost recovery through the state's indirect cost plans—an alternative that may technically provide reimbursement, but totally fails to meet state auditor needs.

The financial burden of single audits, including federal grants, will fall on state auditors; however, none of the money would flow to the state auditor's office that might eventually come back to a state as a result of including audit costs in an indirect cost plan. Those funds are outside our control. Nevertheless, many federal audit agencies still propose this as the only answer to state auditor reimbursement.

State government is no more a monolithic structure than the federal government. To say that costs imposed by an independent audit agency can be offset by future funding to be possibly made available to operating agencies is shortsighted and unrealistic. With the current shortage of funds most states are experiencing, unless direct payment or reimbursement is available for audit work made on behalf of the federal government, it will be extremely difficult for state auditors to command the resources necessary to respond to the need to include federal audit work in our single audits.

Quality review

Reliance on the work of an audit organization and a quality review process that assures the proper performance of audits made by that organization are inseparable. Section 204(d) requires reliance of federal agencies on audit work performed by audit organizations which have been approved pursuant to a quality review process established and approved by the Director of the Office of Management and Budget. Attachment P to OMB Circular A-102 prescribes an overall systems approach to reviewing the level of performance and quality control of audit organizations—an approach supported by state auditors.

The National State Auditors Association and the National Intergovernmental Audit Forum have jointly undertaken the development of a quality review process that would satisfy this need. Over the past three years we have developed formal guidelines and tested and refined them through actual reviews of eight state and two local audit organizations. There are several other state and local auditors who have requested similar reviews. We find it disappointing that federal audit agencies have been reluctant to submit to the same review process. Nevertheless, we believe the process is now essentially ready for general use.

SINGLE FEDERAL COGNIZANT AGENCY

I would like to conclude with the suggestion of a single agency that could make uniform, consistent and timely decisions in working with independent auditors in implementing single audits. This single cognizant agency is not provided for in S. 45, but the concept was suggested by a recent JFMIP report which was endorsed by GAO, OMB, state auditors and most other governmental audit agencies. Considering the time delays, lack of consistent or clear jurisdiction, duplication of effort and general lack of progress in implementation of the single audit concept through separate cognizant agencies, we urge the feasibility of this approach be reviewed and the committee's conclusion be reflected in the records of these hearings.

On behalf of the State Auditor Coordinating Committee and its parent organization, the National State Auditors Association, I express our appreciation for this opportunity to appear before you on this important issue. It has been my personal privilege.

I will attempt to answer any questions that you may have.

Senator **Durenberger**. We will now turn to a panel on the law of Federal grants and the impact of the courts on the Federal assistance system. We have two witnesses for this section of the hearing.

Thomas Madden is a former Assistant Administrator and General Counsel for the LEAA. He is now an attorney with the firm of

Kay, Scholar, Fierman, Hays & Handler. Tom, are you here? He is not here.

We have just gone from a panel to an expert witness. [Laughter.] George Brown is a professor of law at the Boston College of Law and the author of several articles in the field of intergovernmental relations—including "Federal Funds and National Supremacy: The Role of State Legislatures in Federal Grant Programs." Obviously he is a recognized expert in the field of grant law. It is our privilege to receive your testimony today. Please proceed.

TESTIMONY OF GEORGE D. BROWN, LAW PROFESSOR, BOSTON COLLEGE LAW SCHOOL, NEWTON CENTER

Mr. Brown. Thank you very much, Mr. Chairman. My name is George Brown. I am a professor of the Boston College Law School. I have a prepared statement to which I will refer, but I will not read it.

My principle premise is that the Federal courts have become major participants in the day-to-day operation of the Federal grants-in-aid system. I state on page 1 of my testimony—and I admit I am speaking with a lawyer's biases—that it is impossible to understand the functioning of the intergovernmental aid system, much less to reform it, without an awareness and understanding of the pervasive role of the Federal courts.

In my 10 minutes I would like to ask and try to answer three broad questions. No. 1, what are the courts doing? What are current judicial developments? No. 2, what is the effect of these developments on the grant system? And No. 3, what, if anything, should Congress do, or should it simply leave matters as they are?

With regard to No. 1, I think there is no dispute that the courts are engaging in a great deal of supervision of grant programs. The volume of grant litigation, by all estimates, is rising. I don't think anyone knows the number for sure, but we are talking about thousands of cases.

Conceptually, it is useful to distinguish between grantor-grantee disputes on the one hand, and what I refer to as third party suits which challenge the award of Federal funds or perhaps challenge the administration of Federal funds. In my remarks I will deal solely with third party suits. This is the area where the greatest explosion has occurred.

I think there are two reasons for that. One is, as the grant system expands, it is not just that you have more programs; it is that you have more clusters of interest as well.

No. 2, the courts have shown an extraordinary receptivity to grant litigation. I discuss at some length the most recent example at the Supreme Court level, *Maine* v. *Thiboutot* in which, in essence, the Court held that every grant suit is not a civil rights suit, and that it doesn't make any difference whether Congress provided in the underlying legislation for suit by third parties or not, but that section 1983 is available. I regard that as an astounding decision.

I disagree with it, as you can see from the first four or five pages of my presentation. I won't go into that at length, except to say that the Congress has addressed itself to the remedial issue in some grant programs. It has addressed the issue of whether or not third parties should be able to sue. Thus, from a separation of powers' perspective, I am very disturbed with the *Thiboutot* decision which, in effect, takes remedial decisions away from Congress.

My second set of questions was the effect of this judicial receptivity on the operation of the grants system. That is the section that begins on page 7, under "Third Party Litigation—Good or Bad."

The traditional arguments for third party grant suits are quite straightforward. They are put forth with customary eloquence by Justice Harlan in the *Rosado* case.

No. 1, you need such suits to keep the grantees honest. There is the inherent potential for evasion. It may be a legitimate disagreement. There are those who would simply want to convert Federal funds and put them to their own use. Therefore, as an additional enforcement mechanism, you need this sort of private attorneys' general.

The second reason why courts have been hospitable, and perhaps should be, is that the kind of people who bring these suits are frequently people who don't have a great deal of clout in the grantees' political process. This is certainly one of the historic roles of the Federal courts: to be open to the vindication of Federal claims by such persons.

Yet, at the same time, I think an argument can be made that much of the current malaise—if that is the word—about the grant system—much of the feeling that it is out of control, that accountability has been lost, that the programs are too costly, that they are too complex, and so forth—stems from this increasing volume of litigation.

Let me just give you one example. Take the issue of cost. Third parties bring a suit, perhaps to challenge the relocation of a Federally financed facility. Well, the cost of the time and effort defending the suit can be substantial. Under *Thiboutot*, and companion cases, the plaintiffs can get attorney's fees, even if the case is not decided in their favor, as long as there is a settlement that grants them some modicum of what they sought. Even if the defendant grantee wins, the resulting delay has caused confusion and serious implications in the budgetary processes. I refer at a couple of points to the novel, and to me very disturbing, phenomenon of damages being awarded against the officials of grantee government in the formal administration of Federal grant programs.

The problem here is that if opting out is a real phenomenon, if in fact jurisdictions are considering not taking Federal funds and are dropping out of Federal programs, I would cite the prevalence of these lawsuits. When you accept a Federal grant you may well be buying into a complex and difficult lawsuit in a Federal district court, with the possibility of appeals, rehearings and ultimate litigation in the Supreme Court. I think this is one more factor in the whole phenomenon of the grant system becoming much less attractive to the grantees.

Briefly to my third point, what should Congress do? I suggest, as a beginning, on the overturning of the *Thiboutot* decision. I note that Senator Hatch, just a couple weeks ago, filed legislation to do that. I say this with some trepidation because any attempt to alter section 1983 will be a red flag to the civil rights community for whom section 1983 is such a vital statute. I have examined Senator

Hatch's legislation. I think it is quite responsible. I think it poses no threat to civil rights interests, as these terms are usually used, and therefore I would hope to see it passed. It is not going to have an easy time.

Beyond that, what should Congress do? I want to modify something that I said at the end. This is on page 17. That the design and consolidation of grant programs would be the ideal time in which to consider the role of the courts. I get the feeling that this subcommittee and also the Reagan administration has put grant consolidation on a fast track, so to speak. I don't want to derail it by introducing the very, very complicated question of the role of the courts. To be very honest, Mr. Chairman, it is something that has not received much study. It is something that we don't know a great deal about, except that it is out there and one can hypothesize the effects that I have hypothesized. So I would hope, rather, that this subcommittee, its House counterpart, the ACIR, and others working in the grant system take it as a priority task to start finding out more about what the courts actually do.

To conclude, I think one of the reasons why so little is known about it is that much of the academic literature on grants is written by nonlawyers. I have the greatest respect for people in public finance, economics, and political science. At the same time, the lawyers have suddenly found themselves thrust into grant disputes. With all due respect for my profession, I think they simply don't understand the grant system.

There is a need for a bridge. The ACIR began it last year with a conference on grant law. But I think we have only scratched the surface.

That concludes my formal remarks.

Senator DURENBERGER. I understand that Mr. Madden is on his way. Does your time permit you to wait until he gets here and gives his testimony? Then I could ask a few questions and get responses from both of you.

Mr. BROWN. Yes, Senator. I am at the subcommittee's disposal.

Senator DURENBERGER. Thank you.

[Mr. Brown's prepared statement follows:]

FEDERAL FUNDS, CONGRESS AND THE COURTS -- BEGINNING THE DIALOGUE

Testimony by Professor George D. Brown, Boston College Law School, before the Intergovernmental Relations Subcommittee of the Senate Committee on Governmental Affairs, March 11, 1981. (Footnotes omitted.)

Mr. Chairman, members of the Subcommittee, let me begin by expressing my appreciation at being invited to testify at these timely and important hearings. The President's spending proposals have increased the level of interest in, and the momentum for grant reform. That momentum was already strong, thanks in no small measure to the work of this Subcommittee on Federal assistance Reform Legislation. Let me also express my support for the Subcommittee's decision to explore the issue of the role of the courts in the operation of grant programs. To my knowledge, this marks tbe first time that any Congressional Committee has undertaken an across the board look at this vital issue. One sometimes speaks with the biases of one's profession. Still, I would advance the proposition that it is impossible to understand the functioning of the intergovernmental aid system -- much less to reform it -- without an awareness and understanding of the pervasive role of the federal courts.

The volume of federal grant litigation continues to rise dramatically. The area of most growth -- it was termed " a veritable explosion" as early as 1972 -- has been suits by third parties, which challenge the award or administration of federal funds. My testimony deals with these suits. Such actions --to be distinguished from grantor-grantee disputes -- are generally brought by beneficiancies of a statutary condition applicable to the grant program in question. In some cases they invoke provisions which apply specifically to one program, such as the Community Development Black Grant's priority for activities benefitting low and moderate income people. In other instances plaintiffs may be relying on conditions which apply to several or all grant programs. (These conditions are frequently referred to as "crosscutting" national policy requirements or "mandates.") A good example is Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against handicapped persons in federally assisted programs.

Plaintiffs in these actions have often encountered serious threshhold difficulties, including the question of whether they have a "cause of action" if the underlying grant statute does not provide for such suits. Such provisions are rare. In Maine v. Thiboutot the Supreme Court held, apparently, that 42 U.S.C. § 1983 provides an express cause of action for all such plaintiffs, as long as the grantee is acting under color of state law, since its reference to "laws" means all laws including grant conditions. (§ 1983 provides that

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunitites secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.")

This testimony utilizes Thiboutot as a departure point for an examination of the impact of third party suits on the functioning of the grant system. It begins with a critical analysis of the decision itself. I then argue that third party suits have serious negative consequences for the grant system. In conclusion, it is suggested that Congress should overturn Thiboutot, but that this is only the first step in an overall review of the role of the federal courts in federal aid programs.

II. Thiboutot - Making it Look Easy.

A. The Decision.

Maine v. Thiboutot involved a challenge by welfare recepients to a reduction in their payments, which they asserted violated a federal statute. The action was brought in state court, resulting in a ruling favorable to plaintffs. On certiorari the state sought review of a ruling by its Supreme Judicial Court that plaintiffs were entitled to attorney's fees under the Civil Rights Attorney's Fee Awards Act of 1976. According to the Supreme Court the case presented two issues "(1) whether § 1983 encompasses claims based on purely statutory violations of federal law, and (2) if so, whether attorney's fees under § 1988 may be awarded to the prevailing party in such an action." In a somewhat cursory opinion, Justice Brennan, writing for a six man majority, answered both questions in the affirmative.

In resolving the coverage issue he emphasized the "plain language" of § 1983, i.e., its reference to "laws," in addition to the Constitution. He also relied on numerous cases such as Edelman v. Jordan, which appeared to rest on the premise that § 1983 extended to statutory claims. Finally, he analyzed the legislative history as inconclusive, arguing that when Congress added the words "and laws" to § 1983's predecessor it might have envisaged only equal rights laws, or it might have had a broader purpose.

As for attorney's fees, having decided that the original challenge was a § 1983 action, Justice Brennan invoked the plain language of § 1988 to affirm the holding that an award was proper ("Since we held that this statutory action is properly brought under § 1983, and since § 1988 makes no exception for statutory 1983 actions, § 1988 plainly applies to this suit.").

In a sharp dissent Justice Powell chastized the majority for deciding the matter "almost casually," and took issue with them both on legislative history and on the weight of prior decisions. Of particular significance for this hearing is his elaboration of the serious policy and programmatic arguments against extending § 1983 to all statutory claims. He noted that states and localitites are engaged in "literally hundreds" of cooperative programs with the federal government. He emphasized the broad scope of grant programs, and predicted a vast increase in third party grant litigation.

Part of Justice Powell's objection to this impact of Thiboutot rested on federalism grounds: the spectre of the federal courts overseeing a broad range of state and local activities. He was also disturbed by the potential for a vast increase in damage claims against governmental grantees and their officials for violations of grant conditions. In the case of municipalitites, he noted that the combined effect of Thiboutot and Owen v. City of Independence could be strict liability for such violations.

B. The Problems.

Opinions on Thiboutot differ. Professor A.E. Dick Howard of the University of Virginia reacted as follows: "I have problems with taking a statute aimed at discrimination against blacks at a time when government didn't care about handing out benefits, and applying it 100 years later in a totally different age." On the other hand, the Harvard Law Review has gushed with praise: "At little expected cost, the Thiboutot holding offers the promise that all state and local officials will be both held accountable for past deprivations and deterred from committing future errors. These ends will be served best if Thiboutot plaintiffs are able to recover damages. Only then will effective compensations and deterrence take place." With respect, I think the Review is wrong.

As far as precedent is concerned, if the matter were as clear as the majority thinks, one wonders why the lower courts in scores, perhaps hundreds, of cases have engaged in painstaking analysis to determine whether a cause of action could be implied under a particular grant statute. Whenever the defendant was a state or local grantee it would seem that the plaintiff could simply have invoked § 1983 as an express cause of action. It is hard to believe that the lower courts, and litigants, simply missed the point. Indeed, the Court itself seemed to treat the issue as open in a 1979 case.

There is also a serious separation of powers problem with the Thiboutot analysis. The Court's result takes away, retroactively, the remedial issue from the Congresses which have enacted some 500 grant programs. It is important to recognize that Congress has, on occasion, grappled with the question of third party challenges to grantee practices. The best example is the 1976 amendments to the State and Local Fiscal Assistance Act of 1972 (General Revenue Sharing.) Congress was dissatisfied with the Office of Revenue Sharing's administration of the program and with inconsistent court decisions on the ability of third parties to sue. The amendments establish a complaint mechanism, and provide for a private action as follows:

> "Whenever a state government or a unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this Act, upon exhaustion of administrative remedies, a civil action may be instituted by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction."

A similar provision can be found in the Education for all Handicapped Children Act. It is not clear why Congress bothered to provide for private suits if, as Justice Brennan said in Thiboutot, it was well aware of the Court's "many pronouncements on the scope of § 1983."

Thiboutot could have particularly distrubing results in situations where Congress had decided against allowing third party grant suits. A case in point may be the Mental Health Systems Act of 1980. The legislation which passed the Senate contained a bill of rights for persons in programs or facilities subject to the proposed law, and provided expressly for a private civil action to enforce those rights. The House legislation had no bill of rights at all. The Conference Committee produced a compromise: a bill of rights section, but no provision for judicial enforcement. If Thiboutot means what it says, that compromise is a nullity insofar as any facility which operates under color of state law is concerned. Section 1983 provides a cause of action for violations by such facilities of the bill of rights no matter what Congress wanted or did not want.

Thiboutot will almost certainly mean more third party suits, especially since attorney's fees are now available. The decision also opens up the relatively unexplored issue of damages in grant litigation. In his dissent, Justice Powell identified "unemployement, medicaid, school lunch subsidies, food stamps and other welfare benefits" as "particularly inviting subjects of litigation..." Since denial of a benefit essential to health or even to life itself could lead to serious and demonstrable harm his prediction may prove correct. In a somewhat similar vein, Professor Richard Cappalli has explored the possibility of "senior citizen torts," "children's dietary torts," and "poor people's torts."

Whatever the meaning and impact of Thiboutot, it is clear that the decision is one more in a string of victories for plaintiffs, the net result of which is to increase substantially the bringability and the volume of third party grant litigation. For example, standing has virtually disappeared as an obstacle; and the jurisdictional amount has been abolished altogether in federal question cases. These developments have occurred at the same time that an increasing drum beat of criticism is being leveled at the grant system itself. The system is attacked as ineffictive, costly, and violative of principles of accountability. Some of the critics have noted the role which litigation plays in contributing to these conditions and to the overall complexity of federal grant programs. We turn now from Thiboutot to a general consideration of the impact of third party litigation on the functioning of the grant system.

III. Third Party Litigation -- Good or Bad

A. The Case For

The arguments in favor of suits by third parties attacking the award or administration of federal grants are straightforward and self-evident. Justice Harlan's opinion in Rosado v. Wyman suggests two purposes which such suits further: making certain that Congress' will is not ignored by grantees, and protecting the individual beneficiaries of federal aid programs. These justifications overlap, but can be examined separately.

Congress attaches conditions to federal aid in order to achieve what it perceives as national objectives. This is true both as to program specific conditions, which prescribe how the money is to be spent, and "cross-cutting" conditions, which further values such as non-discrimination or environmental protection. The very presence of any string represents a potential displacement of the grantee's freedom to choose, in that the grantee might well not have chosen to follow the course of conduct "mandated" by the string. That is why Congress imposed the condition in the first place. There is thus an inherent potential for grantee evasion and disobedience of virtually all grant conditions. Among the examples of motivation might be a desire to cut costs, legitimate disagreement over how best to operate a program, or an outright desire to convert federal dollars to uses other than those intended by Congress. Allowing third parties to sue to enforce grant conditions is an essential tool to help keep the grantees honest.

It is also important to focus on the types of person likely to bring such suits. In many instances, they will be individuals or groups with little clout in the grantee's political processes. Examples include welfare recipients such as the Thiboutot plaintiffs, racial minorities, classes such as the handicapped, low income persons generally, or those promoting a locally unpopular cause such as environmental protection. (The typical case would be one in which the overwhelming majority of a community wants to build a federally aided facility, but a small group of environmentalists seeks to block it.) A fundamental premise which underlies much of the present grant system is that state and local governments cannot be counted on to respond adequately to such interests. Thus, third party grant suits represent one more instance of the federal courts serving as "the primary and powerful mechanisms for vindicating every right given by the Constitution, the laws, and treaties of the United States."

B. The Counter-Arguments.

1. The Traditional Objections.

Grant litigation has not lacked critics. Dissenting in Rosado, Justice Black expressed a strong preference for the administrative process as the initial point for resolution of third party grievances against grantees. He noted that Congress had established detailed provisions for review by H.E.W. of state compliance, and expressed concern that "it will be impossible for H.E.W. to fulfill its function under the Social Security Act if its proceedings can be disrupted and its authority undercut by courts which rush to make preceisely the same determination which the agency is directed by the act to make." Thus, Justice Black saw third party grant disputes as strong case for invoking the doctrine of primary jurisdiction.

A second objection to grant litigation might be based on federalism prinicples drawn from cases such as Rizzo v. Goode. It may be undesirable for the federal courts to thrust themselves deeply into the everyday spending decision of states and localities. The Second Circuit once remarked that it did not want to function as the welfare commissioner for the State of Connecticut.

Whatever force these objections may have, the Supreme Court has, explicitly and implicitly, rejected them in a virtually unbroken line of precedent stretching from King v.Smith to Thiboutot. However, one can outline a new and somewhat different set of objections to third party grant litigation. They are liable to be presented with considerable force as a full scale debate on the future of the grant system moves to center stage. These objections are rooted in, and are part of, a fundamental disenchantment with the system in its present form.

2. The Grant System - Out of Control?

There is a growing consensus among many specialists in the field of intergovernmental relations that the grant system has grown so complex as to be unworkable. The principal source of these criticisms is the prestigous Advisory Commission on Intergovernmental Relations (ACIR). The ACIR has characterized contemporary intergovernmental relations as "more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and above all, more unaccountable." An ACIR Report on "The Federal Role in the Federal System", (Subtitled "A Crisis of Confidence and Competence") spells out the problems in detail. Grant programs are exceedingly difficult to implement because of "administrative failures, red tape, and tensions between the levels of government. . . ." There is mounting evidence that grants do not achieve their programatic goals. "In field after field the results of some federal-state-local assistance and regulatory programs have fallen well short of initial expectations." Additionally, participation in federal grant programs can be very costly to recipients. Administrative costs can be high due to the "proliferation of programs serving similar objectives and the extraordinary specifity of numerous program efforts, all in the same functional area and each with its own administrative requirements and procedures. . . . " Furthermore, complying with grant conditions such as equal access for the handicapped can be costly for grantees.

Finally, there is the issue of accountability.

> "The root problem is that, in intergovernmental programs, no level bears full administrative responsibility for the use of public funds. Fiscal accountability is divided and confused. As a consequence it is widely believed that local officials "gold plate" their federal grant applications and are willing to incur costs that would be unacceptable if they were wholly financed from local tax revenues. Similarly, federal officials can not really be held responsible for the uses made of funds by lower levels of government, as they can in the federal government's own direct activities."[89]

The ACIR's gloomy assessment is shared, in varying degrees, by many others, including the Office of Management and Budget, the grantee community, and members of Congress. The problems outlined by the ACIR are serious enough as is. They could lead to worse consequences. One, albeit unlikely, might be a complete dismantling of the grant system, given President Reagan's campaign pledge to "transfer, whenever possible, federal programs back to state and local governments along with the tax sources to pay for them. . . ." If this transfer takes the form of block grants, as seems more likely, the loss to current program beneficiaries may not be great. But if the federal government simply gives up programs, there is no guarantee that states and localities will assume them. In some cases constitutional and statutory limits on taxing and spending may prohibit it. On the other hand, if the system simply remains as it is, potential grantees may forego federal funding. There is, in fact, a growing tendency to stay away from federal funds because of the very kinds of problems the ACIR mentioned. If the critics' view of the system is accurate, sweeping reforms will be necessary. For purposes of this testimony, however, it is important to examine the extent to which, if any, grant litigation has helped create the present situation.

3. The Courts as Part of the Problem.

Some analysts have suggested that the rising tide of grant litigation is one of the causes of the current problems of the grant system. There are several ways in which third party suits might lead to the type of difficulties cited by the ACIR.

The most obvious is the costs of grant suits. There are the costs of defending the suit. Many such cases are, in effect, brought by independently financed advocacy groups who relish the thought of litigating at the appellate level, and ideally, in the Supreme Court. Thus the litigation, apart from its inherent complexity, is likely to be protracted. Many third party grant suits are brought to stop a federally funded project. Even if the defendant ultimately prevails on the merits, the project may have been substantially delayed. This can increase project costs dramatically. In many instances plaintiffs do win, or a settlement is reached. This can bring into play attorney's fees -- since, under Thiboutot, grant suits are now § 1983 suits -- and, of course, the costs of compliance. These costs will vary widely, depending on the type of suit, but can be quite expensive.

Another aspect of the cost issue is the availability of damages from the grantee and its officials -- an open issue after Thiboutot, as discussed in Section II, infra. The issue of damages in grant litigation is beginning to receive scrutiny. As noted, the Harvard Law Review favors damage awards. Professor Richard Cappalli, in a provocative article, offers a diametrically opposed analysis. He argues that compensating those hurt by incorrectly administered grant statutes will divert scarce resources away from programatic ends. He also views such awards as increasing the chances governments will opt out of grant programs.

Third party litigation also contributes to the complexity and difficulty of administering grant programs. Issues in the suit itself will frequently be baffling to officials not trained in the law. More serious are the effects of the pendency of the suit on the grantee's decision making processes. Take the case of a nearly bankrupt city which decides to close a federally aided facility as part of an overall austerity drive. Minority plaintiffs sue to enjoin the shutdown on the ground that it will discriminate against them in violation of Title VI of the Civil Rights Act of 1964. If the district court grants temporary relief does the city then make other cuts, or hold its breath and hope to prevail on appeal, assuming the appellate court acts expeditiously? Suppose the district court denies relief, but the plaintiffs appeal. Again, what happens to the municipal budgetary process? One answer might be to rely on the advice of the relevant grantor agency. But the federal courts may not agree with the agency. In the widely discussed Hartford community development litigation the grantee defendants were in compliance with H.U.D. guidelines. Nonetheless, the district court and court of appeals overruled H.U.D.

Despite the possibility of such a result, grantees are likely to insist on elaborate guidance and written assurances of compliance before doing anything. To the extent that they have flexibility, they are likely to be exceedingly timid in exercising it. The following quotation from a Community Development case shows a rare judicial awareness of these problems:

> "Allowing a private right of action under the HCDA could cause the Act to lose much of its vitality by making local officials apprehensive of applying for grants because of fears of costly lawsuits. Extensive litigation under the HCDA may encourage communities to engage in low-profile activites aimed at minimal compliance with the program requirements, perfunctory environmental assessment and relocation assistance -- in short, evading major problems and major controversies whenever possible. For these reasons, protracted litigation could spell serious delay and loss of an opportunity to improve this nation's communitites."

Third party suits also aggravate the accountability component of grant programs. Contemporary intergovernmental relations are already loaded with opportunities for finger pointing and buck passing. Litigation complicates the question of who's in charge here. Is it the feds, the grantee, or the judge?

Grant suits can also frustrate the achievement of program goals. Take the case of an economic development project involving federal, local, and private funds, which is attacked on the grounds of inadequate citizen participation. If the court agrees with plaintiffs and grants an injunction, the resultant delay will drive up costs. The public funds may no longer be sufficient. The developer may pull out. Which would Congress have preferred: the project without the participation, or the participation without the project? The court is not in any position to make such tradeoffs. It must enforce the grant conditions as they are written.

In sum, third party grant suits may well be a major component of what is wrong with the grant system. It is naive for their proponents to trumpet "the promise of Thiboutot" without recognizing the negative consequences. It would be equally naive for grantees, and their allies, to assert that all of their grant related activities should be shielded from judicial review in the interest of a "smoother" system.

IV. The Congressional Response.

A. Overturning Thiboutot.

The role of the courts in the grant system is certain to come under close scrutiny in the Ninety-Seventh Congress. One of the first issues, of course, will be whether to overturn the Thiboutot decision. Senator Orrin Hatch has filed legislation to do so. (S.554). As the analysis presented in the first half of this testimony suggests, there are a number of excellent reasons to enact it. Congress may simply view the holding that all grant suits are § 1983 suits as wrong. Alternatively, it may be apprehensive about Thiboutot's possible impacts on the grant system, and conclude that one need not wait for them to materialize before acting. Overturning the decision does not present any far reaching constitutional issues of Congress' power over the jurisdiction of the federal courts. Thiboutot involved interpretation of a federal statute, in particular, its relationship to other federal statutes. Indeed, Justice Brennan suggested that those unhappy with the decision address their arguments to Congress.

B. Beyond Thiboutot.

Passage of S.554 may be an important first step, but it is only that. The entire pheomenon of grant litigation -- both grantor-grantee disputes as well as third party suits -- needs a thorough overview by the Congress. Before examining how that might be done, however, it may be helpful to consider what changes in the present situation could be brought about by the courts, and the grantor agencies themselves.

Judicial receptivity to grant litigation is not necessarily cast in stone. The courts could, in theory, do an about face and get tough on third party plaintiffs. Standing could be resurrected as a "formidible barrier" by stressing the causation-redressability formulation of Simon v. Eastern Kentucky Welfare Rights Organization. Courts might also take a very conservative approach to implying rights of action under grant statutes, and, in the case of the Supreme Court, overturn or severly restrict Thiboutot itself. The result of such a judicial trend would certainly be less grant litigation of the sort discussed in this article. That might be viewed by some as a systemic gain, but it does not address the fundamental question of which grant suits ought to be brought, and when are the goals of the system best served by precluding or limiting judicial review?

A more promising approach would be the development of accessible and workable grievance procedures by the agencies themselves. Agency practice in this area varies tremendously but, in general, the administrative avenues available are not viewed as adequate. (Plaintiffs sometimes "exhaust" them anyway, just to be on the safe side.) The availabilty of such procedures might lead to the resolution of a large number of disputes in a forum more susceptible to negotiation and mediation than the grant law suit. Moreover, the courts would be far more willing to invoke the doctrines of primary jurisdiction and exhaustion of remedies than they are at present. In Cannon v. University of Chicago the court noted that the procedures available to persons complaining of sex discrimination did not allow the complainant to participate in the investigation or the subsequent enforcement procedures. Under such circumstances the court refused to require exhaustion of the administrative remedy.

Still, the primary responsibility rests with Congress. It would be virtually impossible to address the issue of the role of the courts in any across-the-board legislation. The grant programs are simply too varied, and the disputes they generate too dissimilar. Block grants present different issues than categorical programs. It makes a difference whether one is talking about suits to enforce the "cross cutting" conditions, or program specific strings. Many different, and difficult, value judgments have to be made. Allegations of racial discrimination in a grant program are more serious candidates for federal judicial review than claims by disapoointed vendors that the grantee has violated contractual obligations, while claims of insufficient citizen participation lie somehwere in between. At the moment it is the courts which make these judgments, on an ad hoc, and highly unpredictible basis.

The role of the courts ought to be addressed specifically each time the administration and the Congress deal with restructuring or reauthorizing each grant program. The design of grant consolidation packages, which the Reagan Administration has advocated, would provide an ideal opportunity. It should be possible to identify in advance the types of third-party disputes which a given program would generate. Policy makers could then decide which should be insulated from judicial review, which should receive limited judicial review, and which should receive wholescale review of the sort awarded in most third party suits as things stand now. For example, the issue of whether there had been adequate citizen participation might be considered committed to agency discretion, while complaints of racial or sexual discrimination would still be able to be heard in a judicial forum, perhaps after exhaustion of administrative remedies. Another possibility would be utilization of "certification of compliance" procedures which insulate a grantee from judicial scrutiny in a given area for a specific time.

An important variable will be the manner in which different granter agencies approach the various grant strings. Mission-oriented agencies may tend to ignore strings that do not further, or which even hamper, achievement of program goals. Program design involves evaluating the utility of the judicial process as a check on both the (federal) administrative process and the (non-federal) grantee's conduct, balanced against the negative effects of judicial intervention.

The citizens suit provision of the Revenue Sharing Act, offers a possible model, although this statute is by no means ideal. For example, it is not clear against whom the suit is to be brought; the grantee, the agency itself, or both. The provision is silent also on the vital question of whether the suit referred to is a de novo proceeding or a review of an admistrative action subject to traditional scope of review concepts such as arbitrary and capricious. Furthermore, it authorizes suits in state courts, an approach which raises serious institutional and constitutional questions. Also, it should be noted that this position applies to all violations of the Act. (It also allows for attorney's fees.) As indicated above, it seems desirable to limit third party complaints, perhaps to those sorts of violations which threaten strongly held national policies.

The alternative to specific legislative consideration means leaving matters up to the courts. The thrust of this testimony is that that approach has not worked in the past, and there is little reason to think it will in the future. Of course, if the new grant programs which emerge contain a radical reduction in the number of grant conditions, it seems likely that there would be a concommitant decrease in the number of third party suits. However, the issue of the cross-cutting requirements, which generate many of the third party suits, would still remain. The thesis advanced here is that careful consideration by the Administration and the Congress of the issue is the only way to achieve a solution which takes into account both the programatic and federalism values to be served by any federal grant statute, as well as the rights and interests of the individuals affected by such programs. The task is not easy; the trade-offs are difficult. Nonetheless, these issues have been simmering just beneath the surface for some time now. An honest dialogue will be necessary to arrive at an adequate resolution. At the very least, it is time for the dialogue to begin.

Senator DURENBERGER. Mr. Flood, if you are prepared to give your statement now, we will move you up on the agenda.

Our next witness will be Henry Flood, director of the grant law program at Antioch School of Law. Previous to this position Mr. Flood was the director of community development in Blades, Del. The information I have indicates that during his tenure, Blades was never very short of Federal funds. So Mr. Flood comes to our hearing with a reputation for a thorough working knowledge of the grants system.

We look forward to your statement, Mr. Flood.

TESTIMONY OF HENRY FLOOD, DIRECTOR, GRANT LAW PROGRAM, ANTIOCH LAW SCHOOL, WASHINGTON, D.C.

Mr. FLOOD. Thank you, Mr. Chairman. I would like to make one brief correction about my affiliation with Antioch Law School. I am not affiliated with the JD program. I am affiliated with the legal studies program, which is a program for nonlawyers who work in various professional capacities where a legal JD degree is not required but yet a substantial amount of legal knowledge is needed in order to function, say like in EEO law or in this case grant law and so forth. So I am not an attorney.

I appreciate the opportunity to appear before the subcommittee this afternoon and speak briefly to Senator Roth's proposed Federal Assistance Improvement Act of 1981. I believe, like most of the other witnesses before me, that we have been talking about grant reform long enough. I think it is time that we start to get very serious about not only the specific nature of the reforms but to propound a really sound philosophy of management of the Federal grant system.

It has been my experience over the past 10 years in local government—operating with these programs, applying for the assistance, going through the maze of people, regulations and procedures—that really we have spent so much time concentrating on allocating money and so much time on trying to find money or hustle for money—whatever you wish to call it—that we are neglecting one of the most important elements in the grant system. That is, how will it be managed? How will it be managed economically, efficiently, and effectively?

In that respect, I believe that Senator Roth's bill will take us a long way on the road. It is strange that, in the regulatory environment of Federal aid, it is almost incomprehensible to the general public—and to those of us who work in it—just simply because it does get so confusing. Yet the Federal grantor agency and the recipients all want to be successful. We all want successful projects. We all want things to work well. We are sort of like an odd couple. We want more and we want less at the same time. In other words, we want regulations to go away, but we want them yet to be very specific. It is a rather difficult and demanding task to achieve. The grantor agency wants a safe grantee—somebody who is going to abide by the law; somebody who is going to carry out a successful program. And a person who is applying for that assistance wants to build his project or solve his problem and carry his light across the paper.

The question is, Will the grant reform bill proposed by Senator Roth do the job? I think it will. This is basically the third version of the grant reform bill from S. 878. It is a strong bill. Title I starts out by proposing that the President be able to consolidate functionally related programs; so that, as we see more and more of the categorical programs start building up, the President can say, "This doesn't make a lot of sense. Let's consolidate it into larger programs so that we save money at the Federal level and get these programs operating in a functionally related way."

But the parts of Senator Roth's bill that I like the most are titles II and III, which speak effectively to audit, financial management, and standardized crosscutting requirements. Often those of us, who have worked in the trenches with these programs from time to time, find that when you go through a program and you have everything finished, then all of a sudden you have thousands of dollars in questioned cost. The people who gave you the money to start with are gone. You don't know what to do about it.

I think that title II starts out on the right track by saying, "Let's have a single audit of the recipient's organization so that we look at him as a total entity." It says that we should have basically uniform standards of audit, financial management and financial practice and that the Federal Government, in essence the Federal grantor agency, would accept an independent audit that was in conformance with standard audit practices.

I think that is good. That will save some time. It will save some money. For too many years we have just concentrated on this matter of "are the dollars there." I am glad that the language is stronger in terms of compliance auditing. Making sure that the local grantee does comply with the law—and they ought to meet an audit process—is a viable way to do it. In this way we can view how well he did his program and how well he complied with the various laws, merely because there are people who do receive Federal financial assistance who don't have the best public policy interest at heart. They don't care how they adminster these programs—some of them. Consequently, I am glad to see that compliance audits will be stressed more.

With respect to the matter of crosscutting requirements, the bill is again rather strong. It says, in essence, that we should have uniform policies. We should have lead agencies developing these crosscutting requirements and they should be binding on all of the other Federal agencies.

In general, I think that is a sound concept. However, I am troubled, in part, by the degree of uniformity that we can attain in programs simply because some types of programs are different, as well as some types of recipients.

For example, if you took the area of environmental protection, the type of guidance that would be necessary to adequately protect the environment in a construction program would be vastly different from that necessary to protect the environment in, say, a social service type program.

If you looked at a very specific requirement, like uniform relocation, yes, I think here is something where you can develop a very specific standard. HUD has a good idea there on uniformity location. So when you talk about standardization, I think we have to look in terms of relative standardization being sensitive to the type of grantee being funded and the type of program being operated.

With that in mind, I generally believe that title III of the bill should be carried out to the fullest extent.

One other element of title III I think is quite important. I hope it will give some real strength to what we call the OMB circular system—the various management circulars like circular A-102 on administration and A-107 on cost standards for State and local governments.

It has been my experience with State and local agencies that some do not follow these general management circulars as well as they should be. Others resist it and others say they just don't have the enforcement effect of law. So if we are really serious about articulating a sound, practically oriented management philosophy to be incumbent upon both the Federal grantor agencies and the grantees alike, then I think we should make the circulars something more than just circulars. We should make them on the par of a regulation, or some other type of stronger language, that would give them stronger legal support.

Moving on to integrated funding, I think this is much stronger than what we have under the Joint Simplification Funding Act of 1974. Frankly, it has been a frustrating failure. I tried to use it twice in Delaware. I couldn't even get the agency to talk to me. The first thing they were concerned about was, "Well, we don't want to surrender any of our requirements and any of our policies." I think had this type of proposal—such as what is now in Senator Roth's bill on integrated funding—been available in Blades, and some of these other communities like Seaford where they were undertaking large construction project, we could have saved 20 to 25 percent of the cost by having a sound, integrated funding process with good management standards and good planning.

So, in the final analysis, I think that strong joint funding can really save some dollars in some of these larger projects by negotiating what it is you want to do and then making the application after you talk to several of these agencies.

One provision that I neglected under title II, I believe it was, is the development of uniform payment requirements. I would like to jump back to title II for a second.

Presently we have three methods of payment when people apply for grants and they start operating their programs. One is the Treasury check. Second is a letter of credit. Third is reimbursement. I would like to see that language strengthened to where the Federal grantor agencies would use the letter or credit as the preferred means of paying, even where large sums of money are involved. I realize that, when you start drawing out a lot of money from the Federal Treasury, they lose interest on the money paid. Yet, we should have the type of letter of credit that EDA used from 1977 to 1979 under the Local Public Works Act, the supervised letter of credit. This makes it a lot simpler.

I thank you very much for allowing me to present just a few points about the way these programs ought to be operated. Thank you.

Senator DURENBERGER. Thank you. I appreciate the thoroughness of your presentation and your written statement, which will be included in full in the record following your testimony.

Let me ask you just one question. In your prepared statement you talked about packaging the assistance program. Can you give us a example of the package you are talking about by illustration perhaps? What is included in the package? How may assistance program packages, for example, be improved?

Mr. FLOOD. Yes, sir. Having received assistance from about eight of the major types of programs that come to State and local governments—like HUD, EDA, EPA, I find that each of these agencies package its assistance and its policy instructions in highly different, and sometimes unusual, ways.

In talking with many of the Federal grant agencies as well as local recipients, I find that they don't talk to each other about effective delivery or telling the grantee, "Here is what we are about; here is what we are requiring you to do." A mayor or a city manager gets one of these packages, with tons of guidance, and it is a confusing mess. So I think that OMB should inspect how the Federal grantor agencies are packaging their assistance and encourage these agencies to talk to each other about communicating on grants packaging and policy more effectively.

Senator DURENBERGER. Thank you very much for your testimony.

Mr. FLOOD. Thank you. It is my pleasure.

[Mr. Flood's prepared statement follows:]

PREPARED STATEMENT OF HENRY FLOOD

Mr Chairman and Members of the Subcommittee on Intergovernmental Relations:

My name is Henry Flood, Director of the new grant law/administration program at Antioch Law School's Center for Legal Studies here in Washington, D.C. . I come before you this afternoon to present my personal viewpoints on grant management reform in general and Senator Roth's newly introduced Federal Assistance Management Act of 1981 in particular. Bill Roth is one of our foremost leaders and experts in the field of intergovernmental relations today. So I am particularly pleased to speak in behalf of his legislation today. In a broad sense of the term we are at a turning point in Federal/State/Local relations. As we begin to re-examine federalism and the role of the Federal government in our lives during the Reagan era, grant management reform will be a topic of critical importance.

I

GRANTS: GROWTH, COMPLEXITY, CONFUSION AND THE NEED FOR REFORM

In 1936 federal assistance to state and local governments amounted to only 250 million dollars. Today, the amount of various grants and loans awarded to state and local governments exceeds 112 billion dollars. The Federal Catalog of Domestic Assistance contains 1,176 programs administered by 60 Federal agencies. What began long ago as a modest undertaking has in less than 50 years become a giant enterprise involving many thousands of people. These people function in many roles: grant makers reviewing proposals and making awards; recipients looking for money often with the assistance of professional grantsmen; administrators managing or mismanaging funded projects; evaluators studying the effectiveness of programs; compliance officers monitoring and enforcing a host of program and crosscutting policy requirements; auditors reviewing funded projects for economy, efficiency and financial integrity; and finally attorneys who litigate the various rights, responsibilities and remedies associated with federal assistance.

This gradual then unprecedented growth in federal assistance has resulted in the creation of a complex network of administrative management issues. How shall the funds be distrubuted? What constitutes equitable competition? How should assistance be packaged and policies attached to that assistance be communicated to recipients? How should we recipients organize to operate a funded project? What laws, regulations, guidelines and circulars must I follow while receiving assistance?

The regulatory environment of federal aid is a rather strange phenomenon for many--especially the general public to comprehend. The grant maker and recipient are somewhat of an odd couple. We both want to solve problems. We both want to see a successful project. The great regulatory paradox is that we want less and more at the same time. The grant maker seeks grantees who can help him fulfill the agency mission and operate programs in a safe, responsible manner within the bounds of established regulatory policy. A grantee seeks funding to solve a social problem or build a facility. But he seeks assistance in the hope that the cross of paper he must carry will be as light as possible. What matters most in the mind of many grant administrators is merely this: How will I navigate through the grants-in-aid maze of people, papers and procedures? How will I comply with as many as 60 crosscutting national policy requirements, the specific program regulations and still successfully complete the project for which I received funding in the first place?

Frankly, there are no simple solutions; no quick fixes which will enable us to regain control and bring a sense of balance and order to our present grant-in-aid system. Over the past 20 years, we have seen a plethora of studies,[1] hearings,[2] Presidential memorandums,[3] and expose[4] touching upon every aspect of the intergovernmental grants process. While federal assistance is important politically and socially in helping to solve problems which are perceived to be national in character, the obvious conclusion one has to draw from the foregoing is that the grants process is frought with mountains of papers and procedures. It has become riddled with conflicts, fraud, abuse, waste and managerial inefficiency at every level of its operation.

Many of us who have spent years in the trenches with assistance programs applying for assistance, managing projects and reviewing thousands of various regulations believe that meaningful, fundamental reforms can be achieved which will substantially improve the way that assistance is managed. We do not--indeed we should not allow papers and procedures to predominate over achieving results with federal assistance. We must not accept a triumph of form over substance.

II

GRANT MANAGEMENT REFORM IN THE REAGAN ERA: AIMING AT RESULTS

Mr. Chairman, I believe that the climate for grant management reform is very favorable today. The calls for change in the way we create, award, and manage federal assistance has been building since late 1977. After years of steady expansion, the real growth in federal aid to state and local governments has begun to level off. In a broader context, we are now experiencing a re-examination of federalism and the role of the Federal government in the shaping of public policy. Overall, I believe this pause and reassessment will be healthy because it will help us to achieve what we have heretofore not managed to do with respect to grant reform: the propounding of a disciplined, effective managerial philosophy and structure to guide grant program operations in the proper direction, that is toward results.

The first and most obvious impact of a reassessment of grants policy under Reagan is simply that there will be fewer federal aid dollars in the current and future Federal budgets. Some programs will be eliminated entirely while others will be consolidated or survive in in other forms. Given the temper of our times, I do not say that this is bad. In fact, I believe that some of these programs should be re-examined and cut.

But what is most important for us not to forget is that federal aid even at reduced levels of funding and fewer programs is still here. It is not suddenly going to wither away. President Reagan is not seeking to repeal federal aid. Budget cuttings and reducing the scope or impact of new regulations is but one immediate, highly visable aspect of needed change. But meaningful, substantive reform must go beyond changes in dollars, regulations and the rearrangement of people and organization charts. For years--too many years--we have concentrated on the process of allocating and getting money without adequately considering the much more important task of managing federal assistance.

Many years ago ,(1937), the late V.O. Key wrote in his book titled The Administration of Grants-In-Aid to the States that:"The success of federal assistance will turn largely on its administration."[5] It is here where the reform must come. Much, if not all, of the failure of grant programs to achieve effective results can be laid to failure in management. We will not reform the management of federal assistance with budget cuts or consolidations alone. We will not reform the management of federal assistance by merely turning the responsibility back to the state and local governments. Regardless of its form, scope and structure, we will only see meaningful reform once the Congress and the agencies enact a statutory and regulatory base which clearly articulates the essence of sound management standards and expectations for federal assistance programs. As long as we have federal assistance Congress and the agencies must provide for leadership and effectiveness in federal assistance programs. This of course does not mean that the various grant recipients have no role in the management of these programs. Recipients must be active in shaping the basic managerial standards for increasing the effective use of federal assistance. When you consider the fact that over one-half of society consists of social service institutions and government whose performance in a literal sense is not governed by the economics of the bottom line, the tasks of management for effective results become of paramount importance.[6]

III

GRANT MANAGEMENT REFORM: A NEW STATUTORY CHARTER

One of the Bills before us today for hearing is S.____ known as the Federal Assistance Management Act of 1981 introduced by Senator Roth. This legislation is comprehensive in its scope of coverage and I believe that its provisions are strong enough to address adequately the critical elements grant management reform.

This Bill has seven(7) Titles. The most important of these are Titles I, II, III,V and VI. Title I establishes a process for the timely consolidation of functionally related federal assistance programs when deemed necessary by the President. The President would be required to study federal assistance programs every two years for possible consolidation efforts. The consolidation process precludes an arbitrary consolidation of non-functionally related programs. If appropriately used, this Title could enable the President to reduce the proliferation of narrow, categorical programs created by Congress from time to time.

Title II of the Roth Bill streamlines and strengthens the financial management and audit standards for federal assistance programs in a number of ways. First, the legislation provides for a financial and compliance audit of recipients and their subgrantees. Secondly, the Office of Management and Budget in cooperation with the General Accounting Office are required to develop standard accounting, auditing and financial management policies, procedures and requirements for application to grants, contracts, cooperative agreements and other forms of federal assistance to recipients. Third, the legislation directs the OMB and the GAO to develop uniform payment policies for the various types of federal assistance. I believe that this portion of the legislation should specifically state that grantor agencies shall use the letter of credit method of payment to the maximum extent possible as the primary method of payment to grantees. Reimbursement as a payment method should only be used with very high risk grantees.

One of the commonly cited arguments against use of the letter of credit method of payment--particularly in construction grants projects-- is the loss of interest to the U.S. Government when funds are drawn down too quickly.

This is a legitimate concern. But there is a relatively simple answer. Instead of using an unrestricted letter of credit when large sums of money are involved, a supervised letter of credit could be effectively implemented. In fact, the Economic Development Administration operated their letters of credit in a similiar fashion under the Local Public Works Program in 1977 to 1979. It worked well. The logic of a supervised letter of credit makes much sense when you consider what can happen when construction projects are funded by more than one federal agency.

The City of Seaford, Delaware had received $2,743,000 to construct a new secondary wastewater treatment plant for its residents. The Environmental Protection Agency(EPA) provided 75% funding on a reimbursement basis. The Farmers Home Administration provided loan funding for 15% of the project with payment restricted to the prorata share of each monthly requisition limited to 15% of that requisition. The City lacked the authority to use interim financing . The State of Delaware funded its 10% costs up front at start of construction. The EPA rules(40 CFR Parts 30 & 35) and the FmHA rules(7 CFR Part 1942) both required timely payment to the contractor as a condition of assistance but in a practical sense of the term it was impossible to do this. Using an obscure rule in the old FmHA regulations, the City appealed to the FmHA national office to close the loan and get the entire amount up front. It took six(6) months to do this. The rule was repealed two weeks later. Had we not been able to get those funds in advance from FmHA, there would not have been a sufficient amount of cash flow to pay the bills or keep the contractors performing. In fact I know of another City which faced a similiar payment problem which could not be resolved. The contractor walked off the job until the problem was resolved.

I realize, Mr. Chairman that this is but a small portion of the legislation to dwell on but small matters can have large consequences for both small and large communities. I trust that the Subcommittee will consider strengthening the use of the letter of credit as the primary method of payment to grantees who receive assistance in excess of $120,000 .

Finally, Section 203(b) of Title II of the legislation provides that OMB and GAO "shall prescribe directives to carry out standard policies, procedures and requirements established pursuant to subsection (a)" above in the Bill. These "directives" would be binding on the Federal agencies. This is certainly an improvement over the status quo. But if what we really want to achieve is a common body of crosscutting financial management and audit standards for federal assistance programs why not regulations rather than directives? I raise this question because there is some legal doubt regarding the binding authority and application of circulars and directives upon agencies and grantees.[7] Presently, I know more than a few agencies who have contempt for the OMB circular system. Some apply it or don't apply it at will in a variety of circumstances. Its confusing and not equitable for grantees. The issue here is not rigidity but a common standard. Unique situations can be resolved through a waiver system or an internal assistance appeals board if necessary. The status of circulars and directives in the legal sense is an interesting question which deserves more attention.

Section 204(a) of Title II provides for bi-annual audits of recipients rather than individual federal assistance programs. These financial and compliance audits would be subject to examination by the Federal government through its quality review process. After the word done on line 19 at page 22 I would consider adding the following words: "unless there is clear and convincing evidence that the independent audit was not done in conformance with generally accepted accounting principles or Federal ..

audit requirements." There should be no doubt about the authority of the Federal government to reject a defective or fraudulent audit.

Title III of the Roth grant management reform bill seeks to improve the administration of the various crosscutting national policy requirements attached to federal assistance by requiring the President to designate a lead agency to coordinate the preparation of national policy assistance standards in various subject areas such as procurement, labor standards, environmental protection and citizen participation. Designated agencies would have one year to develop the newly revised national policy requirements using the method of an interagency task force and consultation with affected recipients. Moreover these national policies would have to be simple and clear; reporting for compliance purposes would have to be minimized; and standard compliance procedures would have to be developed including technical assistance from the agency in complying with the national policy requirements.

In carrying out the implementation and enforcement of the various national policy requirements, agencies would have the discretionary power to certify state or local laws, regulations, directives and standards where they are at least equal to the federal standards. There is good language to remove legislative roadblocks which stand in the way of management simplification or adoption of national policy requirements. The oversight language and requirement to establish uniform procedures for development, implementation, and evaluation of national policy standards and other guidance to recipients is strong.

The fundamental question is this: Is all this activity capable of being achieved? While I am mostly in accord with what Title III seeks to accomplish I do have some questions and concerns. One year is not long enough to accomplish the many tasks required under Title III. The time should be 18 months or two years as was specified in S. 45. Secondly, I am not sure that we can or should strive to achieve absolute uniformity in the operation of each national policy requirement. I believe that uniformity is attainable in a relative sense for most of the national policy requirements. My chief concern is that some standards cannot be uniform in application to all types of programs. For example environmental protection requirements in construction programs would logically be different in scope and character than in a non-construction program. I have no difficulty with the development of performance based standards where there is some flexibility as to the mechanics of being carried out. Citizen participation is a good candidate here. Likewise I see no real difficulty in establishing a very specific national uniform standard for conducting relocations under the Uniform Relocation and Acquisition Act. The Department of Housing and Urban Development has developed an excellent process and handbook for this activity which could be refined for use in all grant programs. I think we should undertake these tasks with care to avoid rigidity and further problems with solutions which may in the light of experience prove to be faulty. This is an area which deserves more careful study even as we take concrete action. Uniformity in national policy requirements was not carefully reviewed in the OMB Study developed pursuant to P.L. 95-224 The Federal Grant and Cooperative Agreement Act of 1979.

I am pleased to note that Section 707(b) (3), (4), and (5) contain provisions which require OMB and the agencies to (1) establish grantee dispute resolution mechanisms, (2) test and evaluate certification techniques, (3) publish a catalog of national policy requirements in effect yearly.

Presently, most agencies have no means of resolving disputes when informal efforts fail. I believe that having administrative dispute resolution boards within each grantor agency will potentially reduce future litigation in the courts and aid in the development of a body of administrative practice with respect to grants policy. My one concern with the dispute resolution boards is simply this: Will their creation destroy the incentive to resolve problems informally? Will their creation result in a rigid, inflexible body of administrative practice? The subcommittee may wish to consider establishing a final place of appeal in disputes between agencies and recipients within either OMB or the GAO. An agency or grantee could have an arbitrary or unjust decision reviewed outside of the agency/recipient environment. Most important is the fact that OMB or GAO could overturn dispute resolution decisions which do not accord with the general principles of grants management contemplated by the Federal Assistance Management Act or its own grant management regulatory policies. I throw this out as merely a suggestion for further study and consideration. It may not prove to be practical in the final analysis.

Titles IV and V of Senator Roth's Bill would established an integrated funding process for projects which will be funded by more than one assistance program. This legislation significantly strengthens the Joint Funding Simplification Act of 1974 and amends the Intergovernmental Cooperation Act of 1968 to provide a more carefully defined structure to promote integrated funding. Joint funding in its present form has been a frustrating failure. It has been resisted by grantor agencies. Even when used, the current joint funding process has been inconsistently applied. Conflicts in agency regulatory and financial authority have often stopped joint funded projects before they could get going.

The integrated assistance concept set forth in this legislation in context with the bill's other Titles, is a big improvement. But the real task is rewriting OMB Circulat A-111 in an applied context which will enable joint or integrated funding to really be successful. The new Circular A-111 for integrated assistance should speak clearly and in applied terms to potential recipients and grantor agencies. By setting forth a realistic integrated funding planning process to be followed by negotiation and then the application, fewer bad projects will get funded and the good projects can go forward. If used appropriately and intelligently, the integrated funding concept can save time and dollars in many construction projects. Had this process been available as now contemplated I know that several federally assisted construction projects could have been built at substantially lower cost.

Mr. Chairman, this completes my testimony on the legislation. It is an ambitious proposal but I am convinced that it will work. It should be enacted into law soon. We need a fundamental legislative charter within which agencies and recipients can work together to manage the assistance process economically, efficiently and with a high degree of accountability.

In conclusion, I would like to make a few observations which go beyond the legislation before us today. There is an old Chinese proverb which says that "a journey of a thousand miles begins with a single step." These hearings constitute the first step. Enactment of a fundamental legislative charter for grants management will take us many miles down the road. Sound regulations and guidance will take us still further.

However, the best legislation, regulations and guidance policy will fail if they do not aim at applied, concrete results. No policies can be effective at any level of government unless they are clear, capable of being understood and most important can be applied for results, that is tied to performance.

That great management genius Peter Drucker has some valuable advice for us about management. He posits a view that management is practice. Management is doing. Management is results and its authority is performance. When drafting the enabling regulations and guidance which will spring from this legislation if enacted, I trust that the agencies, particularly OMB will heed Mr. Druckers wise counsel. I trust that we will have the courage and the patience to propound a common body of practical management practices which can be successfully implemented in the interest of sound results and good performance.

Finally after many years of operating grant programs, visiting agencies, reviewing thousands upon thousands of regulations and guidance, I hope that comprehensive grant management reform will accomplish the following:

(1) Substantially improve the way assistance is packaged. It is strange but in my many visits to countless agencies, it is amazing how little they talk to each other about effective packaging of assistance and communication of grants policy. Likewise grantees consult infrequently with agencies or each other regarding how assistance is packaged. For instance, the officials at the Economic Development Administration's local public works program did an excellent job packaging and communicating assistance policies to their grantees. At HUD in the Community Development Block Grant program, much more needs to be done. My point is this: many of the agencies

individually have interesting ideas and techniques about grants packaging and administration. Someone at OMB or elsewhere should be observing what is happening. We should be looking for ways to improve and cut out those practices which are not efficient or effective.

(2) Upgrade the training in grants management for agencies and grantees. Many agency personnel are not adequately trained to effectively assist grantees in managing federal assistance. Moreover, too many granting officials are not adequately trained in effective techniques of monitoring grantee performance. While most grantees are honest and reliable, reality is that we do have some who do not take their responsibilities seriously and who therefore seek to abuse the assistance process or defraud the government. Likewise grantees need better training on the fundamentals of management and program evaluation/monitoring techniques. Here at Antioch Law School's Center for Legal Studies, we are working on a program which will provide a unique blend of legal and applied management skills to grants personnel at all levels of government. After years of concentration on grantsmanship I think the time for a shift in focus to grant management has come.

I thank the subcommittee for this opportunity to testify and would be pleased to answer any questions or provide other assistance should you desire it.

Senator **Durenberger**. I take it Thomas J. Madden, Esq., is here.

Mr. **Madden**. Yes, sir.

Senator **Durenberger**. You have already been introduced. I gave the full name of the law firm, everything but the telephone number. [Laughter.]

Mr. **Madden**. I have some cards available. [Laughter.]

Senator **Durenberger**. You may proceed.

TESTIMONY OF THOMAS J. MADDEN OF KAY, SCHOLAR, FIERMAN, HAYES & HANDLER

Mr. **Madden**. Thank you, Senator. It is really a pleasure for me to be here today. I want to thank you for this opportunity to come and testify. I am testifying in my personal capacity, really as a student of intergovernmental law and grant law. I have written, taught, and lectured in this field. I am very pleased that this subcommitttee is taking such an intense interest in this area.

I think that you are focusing on issues that are becoming increasingly important. The fact that you are having people here to talk about the legal issues shows how those issues have become of paramount importance in the administration of grant programs.

The Advisory Commission on Intergovernmental Relations in December 1980 published a report entitled "Awakening the Slumbering Giant: Intergovernmental Relations and Federal Grant Law." The title is a throwback to the statement that Judge Tamm of the Federal Court of Appeals for the District of Columbia made in the case of *Southern Mutual Help Association* v. *Califano*, where he likened grant law to a slumbering giant.

The slumbering giant, as the title of the ACIR publication indicates, has awakened. There has been a literal explosion of grant law cases in the Federal courts in the last 10 years. Hundreds upon hundreds of cases have been decided.

In a survey I did with OMB, when I was with the Government studying Federal grant law, we found that there were over 500 cases involving Federal grant law that had been handed down by the Federal courts. Almost 80 percent of those cases had been handed down since 1975. That gives you an idea of the volume of cases and the way that these cases are now beginning to take shape.

Many of these decisions have arisen out of the numerous laws and regulations which impose national policy on grants and establish terms and conditions that all recipients of grant funds must follow. These are the so-called generally applicable requirements that are the focus of S. 45 and of legislation which I understand Senator Roth will be introducing shortly.

The majority of these laws, these generally applicable laws, which include title VI of the Civil Rights Act and the National Environmental Policy Act, have been enacted since 1964 and have given rise to numerous lawsuits brought primarily by third parties who have been denied assistance under a grant, who have been denied the benefits of a grant, or who have been adversely affected by a grant as it relates to these generally applicable policies.

Many of these cases have defined new rights for third parties and new responsibilities for State and local governments. These rights and corresponding responsibilities have increased with the burdens imposed on State and local governments by Federal grant funds. The impact of these laws is a subject worthy of close examination by the Congress, in my view.

The provisions of S. 45, and Senator Roth's proposed bill, are an important step toward bringing some uniformity to the policies imposed by these generally applicable requirements, but I feel more congressional study of this area is needed. A thorough review of these provisions should be undertaken, I feel, and consideration should be given to modifying these laws to reflect the burdens imposed on State and local governments.

I am not going so far as to say that we should have outright repeal of these laws, but I think some reconsideration of these laws and their impact on State and local governments is necessary in an attempt to rationalize that process, as S. 45 would start to do and as OMB has started to do with its study of Federal grant programs.

I think this review is critical in two areas. I would like to just highlight those. One, is the implementation of block grants; and, two, the provision of some relief to State and local officials from legal liability imposed as a result of misinterpretation of the myriad of Federal laws, rules and regulations that govern expenditure of grant funds. Let me talk about block grants briefly.

I came from an agency where we had one of the first block grant programs. I am very familiar with the operation of that block grant program. I was involved in the special revenue sharing programs in the early 1970's—in helping to structure some of those. I feel very strongly that the promise that block grants will eliminate redtape and give control back to State and local governments over the expenditures of the grant funds has only been partially met over the years. Grantees are assured in a block grant of receiving a fixed allocation of funds through some statutory formula and have only to submit a single application or plan that might cover hundreds of individual projects. However, the recipients of block grants must still comply with the myriad of Federal rules and regulations that cover categorical grant programs, the OMB circulars, the Executive orders, the crosscutting, generally applicable requirements. And the specific requirements of the programs that are in the laws establish the block grants have to be complied with.

This was made very clear early in the development of block grants. In the early 1970's, in the case of *Ely* v. *Velde*—the first case in Federal court to test the range of the block grant concept—made it clear, as did subsequent cases, that block grants do not as a matter of law differ from other grant programs.

In the last term of the Supreme Court, in the landmark cases of *Harris* v. *McRae* and *Fullilove* v. *Klutznick,* the Supreme Court made absolutely clear that Congress has wide and sweeping powers to impose the terms and conditions under which Federal grant funds are spent and that State and local governments must comply with those terms and conditions.

Block grants promise no relief from the various Federal laws and regulations. At OMB's last count there were at least 59 different laws, rules and regulations that governed expenditure of grant funds, above and beyond the basic laws that established the programs.

The importance and necessity of many of these laws, such as title VI of the Civil Rights Act of 1964, that impose important controls over the expenditures of grant funds cannot be denied. However, the impact of block grants on redtape in Federal control will be illusionary and temporary as long as the Congress continues to impose new statutory requirements over the expenditures of grant funds and executive agencies continue to create new administrative controls for the expenditure of funds.

Let me turn now briefly to State and local immunity. Walter Groszyk, an attorney with the Office of Management and Budget—he is back here today writing in his personal capacity, and I wrote an article recently entitled "Managing Without Immunity: The Challenge for State and Local Government Officials in the 1980's." It is going to appear in the next issue of Public Administration Review. Many of the following comments I want to make are drawn from that article.

In the article we discussed the Supreme Court's rulings in 1980 in *Owen* v. *City of Independence, Maine* v. *Thiboutot* and *Maher* v. *Gagne,* which when read together with other recent decisions enunciate a set of standards under which, one, local government itself may be held strictly liable for constitutional violations, even though the violations resulted from actions taken in good faith by government officials; and two, State and local government officials may be held liable whenever a person has been injured through the administration of any Federal-State or Federal-local cooperative program, regardless of whether that program is related to civil rights.

These cooperative programs can cover both Federal grant programs and Federal regulatory efforts. Furthermore, under these cases, aggrieved persons may pursue claims alleging injury not only in Federal courts but also in State courts. Finally, successful plaintiffs in such cases may recover their attorney's fees from defendant officials or from their governments.

The effect of these decisions clearly is to eviscerate the once sturdy bulwark of governmental immunity and expose State and local government officials to a liability they had once thought remote. The rulings are likely to dampen State and local governments' enthusiasm for taking innovative and adaptive approaches toward program management; for the prospect is the more they exercise ministerial flexibility, the greater the probability their administration of that program will be challenged.

There has been a lot of rhetoric over the past several years, and certainly with this administration, about devolving authority and responsibility to State and local governments. I think you will hear throughout your hearings on these bills that is a very important point. Rhetoric is not enough. It is important that we actually give more responsibility to State and local governments to administer these programs. They know what their needs are, what their requirements are, far better than we know them here in Washington.

The objectives are sincere, the initiatives are well-intentioned, but we haven't really given out very much. Roles and powers, of course, that have come to Washington over the years are not easily given up. But this limited beginning, I feel, is threatened. President Reagan's emphasis on turning programs back to State and local governments may go unrealized, for much of the devolution strategy centers on enhancing the management of Federal programs by reducing the duplicate layers of Federal and non-Federal oversight and operation which presently prevail.

These Federal schemes for improved management, to a large degree, are predicated on the willingness of State and local governments to exercise a role in administering the use and disbursal of Federal moneys. The recent Supreme Court decisions, however, now cast serious doubt on whether such objectives are reasonable or even achievable.

The statutory base of such results is section 1983 of title 42 of the United States Code. Under section 1983, a person is liable to an injured party when, one, the person acts "under color of any law, statute, ordinance, regulation, custom or usage of any State"; and two, the person deprives any citizen or person in the United States of "any rights, privileges or immunities secured by the Constitution and laws."

I don't want to go over the details which are in my testimony. I would just like to make them available for the record. But I would point out there are a few significant effects from the 1983 lawsuit.

One, the effects on the government official can only be anticipated. We have to see more cases. But certain results are likely to occur. Much more administrative inefficiency may be introduced into the operation of assistance programs. To the extent State and local officials are confronted with liabilities, they will tend to set up procedures, with review and coordination, to assure that every step they are taking is proper and appropriate. It is a natural reaction.

There is also a tendency to focus very much on the question of how far do you go to take responsibility. To the extent that we have large bureaucracies administering programs, we are going to see that the control of legal lawsuits may well be beyond those individuals. You may see reluctance of those individuals in a policy position to try to devolve authority down to actions that they can't control.

Another major area of Federal concern comes from the weariness of government officials who discover that more and more their time and energy are being sapped in responding to legal claims and defending their actions. We have seen such cases. I am not prepared to detail them. But we are seeing more and more cases where people are stepping back from government services, saying they are not willing to expose themselves to the risk of lawsuits that can result.

There is a recent article in the Urban Lawyer which highlighted a couple of these cases where some government officials said they just don't want to assume the responsibility anymore. They just felt that the danger of exposure and the tension it caused were too great for them.

In fact, there is a case before the Supreme Court right now called *Fact Concerts, Inc.* v. *Newport* where the court of appeals for the first circuit upheld a decision in the jury trial at the district court level, which imposed punitive damages both on the city of Newport and on its officials as a result of violation of constitutional rights—in this case first amendment rights. The issue before the Supreme

Court is whether or not punitive damages can be imposed under 42 U.S.C. 1983.

As you know, Senator, punitive damages can be very expensive. It is one thing to talk about actual damages. But the limits of punitive damages are to a large degree a perception of the violation that occurred, the jury's determination of how great that violation is, and the impact on the individual. Punitive damages can be very high. It is a further basis for discouraging government officials to exercise the kind of initiative I think that they need to carry out the program very effectively.

What I want to state is it is my opinion, and certainly that of countless others, that 42 U.S.C. 1983 provides some very important protections for citizens of this country. Section 1983 was added at a critical time in our Nation's history, and the protections which it provides continue to help assure Americans the full protection of our laws and the Constitution. Section 1983 is a testament in many respects to what this country stands for.

However, I feel strongly that Congress must give consideration to the impact section 1983, as recently interpreted by the courts, can have on the operations of State or local governments when officials of that government misinterpret the myriad of laws, regulations, and rules governing the expenditure of funds, and particularly these crosscutting requirements—the various 59 requirements that I mentioned earlier.

I think this is an appropriate subject for hearings and possible legislative initiatives to deal with the very serious problem this creates for State and local governments. The broadest range of views should be sought. I am certainly willing to work with this subcommittee in an effort to address this problem in a manner consistent with the enforcement of the civil rights laws.

I might add that somebody asked me whether this was an appropriate subject to be included within S. 45 or some other area. I don't think it is an appropriate subject for S. 45. I think it is something that is worthy of a separate examination, with a view toward understanding how these Federal crosscutting requirements add to the liability of State and local governments. It is really an area, because of the controversy that might be engendered, that is worthy of separate treatment.

With that, I will close my testimony. I would be delighted to answer any questions you may have.

Senator DURENBERGER. Thank you very much.

I have a few questions on which I would like to have both of your opinions. I would like to start by complimenting both of you, and others, on the work that you have done in bringing our attention to the issue of the legal consequences of the judicial interpretation of the grant programs. This is relatively new to most legislators. They busy themselves with applying authorized appropriations to a variety of needs, without looking at the consequences of their actions. It is particularly true of those 59 decisions about what is now called crosscutting requirements.

My first question deals with the subject of coercion. There are various ways that the Federal grants can be perceived as coercive—matching requirements, the crosscutting requirements, and so on. But clearly over a long period of time coercions have built up a substantial case. Grants are not coercive, simply because the money could be refused. Nobody is being compelled to accept Federal funds.

Could each of you make a case for the coercive viewpoint? Or, in other words, could you make the case wnich a minority should have made in some of these 500 cases to which you each have alluded?

Mr. **Madden**. Let me address it by making the case the other way and then coming back to it. In this publication "Awakening the Slumbering Giant," there is an article I wrote called "The Law of Federal Grants." I tried to address that briefly in that article.

My analysis of the cases concludes that, when the Supreme Court first had addressed the nature of Federal grant programs, they were dealing with a very limited number of Federal grant programs and a concept that had just really begun to make its way into the national scene. In 1923 the Supreme Court addressed this in a case involving the Townsend Maternity Act. The Townsend Maternity Act had a structure very similar to some of the programs we have today, such as the Adolescent Pregnancy Act.

The Supreme Court was faced with a challenge by the State of Massachusetts—*Massachusetts* v. *Mellan* was the name of the case—in which they did not want to participate in the program. They said that Congress, by taking Federal tax funds and making them available to all the States—including Massachusetts, who did not want to participate, was taking money away from Massachusetts' citizens. They said that this was improper and that Congress was trying to impose certain conditions on State and local governments.

The Supreme Court basically said that they were dealing with a political issue. In effect, they ducked the issue, saying this was really something for Congress to take a look at. If States didn't want the money, they didn't have to take the money.

That is where we have the noncoercive doctrine first arising. The issue never really reached the Supreme Court again, in any particular case, until we got to *North Carolina* v. *Califano* a few years ago—1976. In the *North Carolina* case, the Supreme Court summarily confirmed a decision by the District Court in which the District Court dealt with the Health Planning Act.

In my view, I can't think of a more coercive congressional enactment than the Health Planning Act. The declarations and purpose section of the act says its purpose is to establish a national health policy. So we have Congress passing legislation to adopt a national health policy through this Health Planning Act, creating the various health planning organizations and the various standards review boards and mandating that the States establish a certificate of need program whereby the States would control everything in the health field. No one can build a hospital or new medical clinic, as I am sure you are aware, without getting a certificate of need from the State agency.

There are a few dollars that flow, in Federal terms, from the Health Planning Act. But the big lever is that, if you don't comply with the act, all the medical funds coming into your State from whatever source would be cut off—like medicaid. So a State would lose medicaid, the biggest single Federal grant program we now have. I don't know what the range is, but it is probably close to $20 million by now. The State would lose all of its medicaid funds if it didn't comply with the Health Planning Act.

North Carolina said this is coercive. They argued that under their State constitution they were prohibited from regulating private industry, which in effect you have to do to get a certificate of need. The district court rejected this argument with a line that, if they agreed with North Carolina, any State could amend their constitution to get around the Federal law. The court said that, if the State doesn't want the money, they don't have to comply with the Health Planning Act.

Arizona can't turn the money back. Minnesota, I don't think, can turn it back. Michigan can't turn it back. State after State in this country—I am coming back to your argument—pays taxes to the Federal Government and they expect in return to get some benefits from their taxes. Those benefits are coming to them in the form of the $100-plus billion in Federal grant programs. To say that the citizens, if they don't like the conditions of the Federal program, can turn it back is not in my view a realistic appraisal of the situation. Grants become coercive by the very nature that the large volume of dollars makes it impossible for any State or any city to turn down medicaid, or title XX social services, or highway improvement funds, or any of the other funds. Those funds are an integral part of the budgets of State and local governments. There would be a small taxpayers' revolution, I think, in the different States if they tried to turn some of that money back and, in turn, replace it with tax revenues from the local governments.

So I have seen, in my own experience in the agency I was with, that a very small program which was funded about $70 million, was turned down by one State. The State legislature was castigated by a variety of groups and by some of the media for turning down these Federal funds. The State turned down the funds because they did not want to comply with some of the conditions in that particular fund which went against the generally applicable requirements and which ultimately would have cost the State more money than they would have gotten from the Federal Government.

I do think grants are coercive, but I don't think the courts are going to agree with me. I think we have gone too far for the Supreme Court to go back and rethink something like the *Massachusetts* v. *Mellan* case. I don't think the Supreme Court can go back and say, "Well, this particular condition is coercive," or "This is not coercive," and rethink that whole process. It is too firmly in place for the Supreme Court to do it. I think only the Congress is going to be in a position to be able to address that coercive issue.

Mr. Brown. Briefly, I agree with that. In the *Mellan* case the Court used a very appealing phrase, that Massachusetts has the simple expedient of not yielding. Somehow, as Tom Madden says, that phrase and the concept has stuck in the law. There is a body of literature that says the courts are going to arrive at the rescue by using the 10th amendment as a sword to strike down grant conditions. I think that is not going to happen. I think the responsibility does lie with that body which imposed the conditions in the first place.

Senator **Durenberger**. In the effort to find the solution to this—I wouldn't necessarily suggest this method—but is there any way we can look at it through the so-called sorting-out process? For example, could we amend Public Law 95-224, the Federal Grant Cooperative Agreement Act, which defines various forms of Federal assistance and various forms of contracts? Is it possible to use that as some kind of a vehicle to remedy the situation about which we are talking?

Mr. **Madden**. This is the Federal Grant Cooperative Agreement Act?

Senator **Durenberger**. Yes.

Mr. **Madden**. Most certainly that is a vehicle. I am not certain whether your bill is a vehicle to attack that large issue. I think what is needed to be done is to get some sense of what the Federal Government should be doing, what the roles of the State and local governments are and to try to sort out that in a consistent fashion from program to program. That is extremely difficult because you have a variety of national policy objectives that you are trying to meet. I am not certain how I would be able to go about doing that.

The way that you are doing it in S. 45, in a sense of trying to get a handle on the generally applicable requirements, is very commendable. I think that is a start. I think if we got that on the books we would begin to get something out of a sorting-out process. You would begin to get some rationalization of these crosscutting requirements and what they mean. But I think we need some leadership from the executive branch indicating how far they are willing to go. We need the State and local governments to come forth and identify very specifically what their problems are. We need to work between the three—the Congress, the President and the executive branch, and the State and local governments—to begin to go back and sort out, as you indicate, what the problems are.

Certainly the talk about going toward block grants is one way of sorting that out. It is people saying "Gee, we had better get more responsibility back." Unless you focus on—as I indicate in my testimony—not only the 59 crosscutting requirements but the various terms and conditions that are attached to the grant laws, they are attached to the appropriations bills in the appropriations process. The appropriations riders that are attached to the appropriations bills are having some significant impact on State and local governments.

We are seeing, according to the Congressional Quarterly surveys, an explosion, if you will, of riders being added to appropriations bills. To the extent that they affect grant programs, like the Hyde amendment which was the focus of *Harris* vs. *McRae*, they are going to add conditions to grants that State and local governments are going to have to deal with.

Senator **Durenberger**. In dealing with Public Law 95-224 we are going to have to somehow move the boundary line of authority closer to the grantee. That may be one vehicle that will do it. In terms of the general revenue sharing, for example, what kind of legal problems, if any, have arisen where you are moving the authority in that direction?

Mr. **Madden**. I tend to look at grants as going over a spectrum. The concept has been shaped, I think, by what ACIR has done.

I see grants as serving two purposes: No. 1, furthering national policy objectives; and No. 2, providing revenue or returning revenue back to State and local governments to help them carry out their functions. The Federal tax mechanism is far more efficient, as we have seen, in generating revenue than State and local tax measures are. So we have those two purposes.

At one end of this spectrum we have revenue sharing, which is basically returning money back to State and local governments. There are some conditions attached to it. For example, Davis-Bacon is a condition. At the other end of the spectrum we have some of the very tightly drawn categorical grant programs. Maybe the Adolescent Pregnancy Act, the run-away youth program and a number of those are in the list of categorical programs that are scheduled to go into some of these block grant proposals which will be coming up here soon. There you have a small amount of revenue going back to State and local governments and a large policy objective being furthered.

The Federal Government's first lever is the Congress finding what the program should do. There are cases appearing on the other end of the spectrum, *Carolina Action* vs. *Simon*, in which you have a Federal court saying that, in effect, revenue sharing is different than block grants; and, categorical grants, and unless Congress specifically included protection or conditions within the revenue sharing legislation—or in subsequent legislation which referenced revenue sharing, the crosscutting requirements don't apply. So, for example, discrimination is prohibited in the expenditure of revenue sharing funds, but not because of title VI but because there is a specific prohibition in the General Revenue Sharing Act.

On the other hand, the *Carolina Action* case found that NEPA, the National Environmental Policy Act, does not apply to the expenditure of general revenue sharing funds because Congress did not include NEPA within the general revenue sharing statute.

So, yes, the general revenue sharing approach is certainly one way, but you give up any furthering of national policy objectives and you limit your ability to further policy objectives as you move toward the revenue-sharing end of the spectrum.

Senator **Durenberger**. Do you have any comments, George?

Mr. **Brown**. I have comments on revenue sharing. As far as the Public Law 95-224, I think that has had some generative effect at the Federal level in terms of the OMB study and some of the steps that OMB has taken to strengthen its own role. I commend those. I don't think that statute is the highway to devolution or simplifying the system. I do think that revenue sharing systems are. I think what was called special revenue sharing in the early 1970's deserves a closer look.

As Tom says, the courts can tell a difference. There is a fifth circuit case which involves the Relocation Act which by its terms applies to all Federal financial assistance. The issue arose—what happened when the plaintiff was relocated by a city using revenue sharing? Initially the lower courts held that the Relocation Act applied and they said a grant is a grant is a grant. But finally, the fifth circuit came back, no, revenue sharing is different from the Federal financial assistance, as that term was used when Congress enacted the Uniform Relocation Act. So the courts do see the difference. That may be one of the paths to go, particularly in the implementation of the bill before you today.

Senator DURENBERGER. What other vehicles, or remedies, may we consider? I understand, Tom, that in this article which you referred to earlier we will have a suggestion relative to an indemnification approach.

Mr. MADDEN. That is right.

Senator DURENBERGER. I think, George, you have suggested the appeals process, or some kind of resolution. Can either of you give us a more specific list of the kinds of things we should be looking at—in some vehicle other than the bills we have before us?

Mr. BROWN. We both can. In my own case, I think that in the design of grant consolidation programs, the role of the courts—once we know a little bit more about it—should be approached up front and addressed in the legislation that does the consolidation. I think one could identify types of disputes and say these belong in the administrative process, these belong in the courts, and this third category belongs in the courts after initial examination by the administrative process.

I see no reason not to start doing that now, except I have a caveat. I am going to get legalistic, for which I apologize. The process of grant consolidation, which S. 45 envisages, is that the President would send down a list. As I understand it, that list is basically presented on a take-it-or-leave-it basis. The jurisprudence of article III is so firm that it is Congress which controls the jurisdiction of the Federal courts. I think in order to deal with the role of the courts it would require congressionally initiated legislation or otherwise we would be on very, very slippery separation of powers grounds.

So my suggestion is let's do the consolidations first, especially if that seems to be likely, and then sort of factor in the roles of the courts as we go along.

Mr. MADDEN. I would agree with George on this factor. You mentioned indemnification, which I think is important. On the crosscutting requirements, I would like to see an effort made to rationalize that process whereby, when legislation is introduced that is going to have an impact on the Federal grant programs, that that is made clear in the legislation, in the hearings, and is considered somewhere within the overall process, so that we have up front and exposed the impact that something is going to have on grants.

The problems you have probably heard about, or will hear about, as you go through these hearings with section 504, the Rehabilitation Act, are an example. I am not quarreling with the purposes of that act, but the process whereby section 504 was added has been highlighted by a number of studies. People, in voting for the bill, didn't really realize the impact. They didn't have enough information. There are hundreds or thousands of bills really that go through here every year. Unless there is some mechanism that is built into the process for legislation, to focus on the impact of these on State and local governments—as you know, focus on the cost impact as you are required to do in your different reports—unless there is some mechanism for that, we are going to see some other conditions added that are going to cause problems for State and local governments.

Beyond that, I think that as consolidation proposals come before the Congress, I would recommend that they be referred to your subcommittee—if that is appropriate—so that the subcommittee can look at those proposals and focus on the crosscutting requirement.

To the extent that the crosscutting requirements are going to be applied, I think they ought to be referenced specifically in the statute so there would be a reference that these are the requirements that would apply to this particular piece of legislation, as was done with revenue sharing. The Congress went through, when they did it, and looked at the various provisions and said, "Well, nondiscrimination is extremely important. That has to be in this bill. We don't think that NEPA is as important. We are not going to put that into general revenue sharing because it is going to State and local governments."

Those are tough judgments to make. There are a lot of policy issues involved. At least I think that the legislative framework, whereby when these consolidation proposals come up, these different conditions are looked at and built into the legislation, would be very beneficial.

Beyond that, in the legislation that you are working on, there should be a mechanism for rationalizing these processes, and very firm authority given to a Federal agency to establish overall standards, with the Office of Management and Budget having the responsibility for sorting out disputes. I think that can be very important.

If we can have a single audit concept, if we can have single standards for what the environmental impact is, or what nondiscrimination is, I think we are going to lower the burdens on State and local governments. We can still carry out the national policy objectives.

Senator **Durenberger**. Is there any doubt in either of your minds that it is difficult for Congress to either redefine federalism, or give substance to intergovernmental relations, without seriously addressing this issue of Federal funding and the courts?

Mr. **Brown**. Certainly none in my mind. I think the alternative to your addressing it is leaving it to the courts. And what they have shown, as I said in my opening remarks—Tom I think agrees—is a remarkable receptivity. In a way I can't blame them. They see these conditions there. They say, "Well, Congress enacted it. The Congress must have meant it be enforced. That is our traditional role." So you really have two choices. Either Congress takes a hard look at it or you leave the matters to the courts.

Mr. **Madden**. There is no doubt in my mind at all. I think Congress really has to look at it. You have this whole concept that George went into. There has been some erosion of that in the last couple of years, but still it is a very firm part of Federal jurisdiction.

To the extent that the courts can read a statute as creating a right for an individual and find no indication that Congress intended otherwise, they are going to find an implied right of action, or they are going to find an expressed right of action, under 42 United States Code section 1983 where some individual alleges he or she has been denied some form of Federal assistance, or there has been an improper denial. It is really back to the Congress to look at it.

There is one other thing on block grants, and that is the accountability. We tend to think—again I say we; probably referring back to the Federal Government—we tend to think somehow that we can create mechanisms for assuring that the Federal funds are spent properly, which is called accountability. We want to hold State governments accountable for the expenditures. We want to show the funds are innovative, because that is another excuse to create the programs and say we have to have the funds for it. The need for accountability does not reflect the experience of State and local governments. It may have 30 years ago. I don't go back that far. But my experience with State and local governments is that they are efficient, by and large, and they are very sophisticated. They are very capable of using money. And, in fact, if they did not use the money properly, there is a remedy. They may find themselves, the officials, not elected again.

So I think we have to move away from this question of accountability. It certainly clouds block grants and it leads to an awful lot of administration and regulations. Basically, the block grant program accountability should be to see that the funds are expended for what the funds were appropriated for. We should not have to evaluate and see if these funds achieve these particular purposes. It is virtually impossible to do that. It just adds to the burden of State and local governments.

As far as innovation is concerned, I was talking to someone from EPA today. They shared an experience with me which was interesting. EPA again is running into very serious problems with its sewage treatment plants where the plants are not working. They are being built and are not working. What is the problem? There is a lot of money in the pipeline not being spent. There is going to probably be legislation up here soon to deal with the problem. One of the problems is we have to have innovative treatment plants, which are built into the statute. Innovative plants require innovative people to run them. Innovative people have a high degree of training. We need engineers to run these plants. We don't pay engineers to run sewage treatment plants at State and local government levels. We don't pay engineer salaries to run them. They are run by the day-to-day kinds of employees that State and local governments have. These employees have a certain level of training. They are not paid high salaries. So they are told to run these plants and the plants break down because they don't know how to sequence and push the buttons.

It is again a perception that we have. When we try to create here in Washington, we say we are going to create something that is innovative. We have State and local governments where that is not practical, as I am sure you know having been in State and local government for a number of years.

Senator **Durenberger**. I want to thank both of you for your contribution, and the time taken to prepare your testimony and to appear here today. Thank you very much.

[Mr. Madden's prepared statement follows:]

PREPARED STATEMENT OF THOMAS J. MADDEN

Dear Mr. Chairman, thank you for this opportunity to testify before your Committee today. I have been a student of intergovernmental law and federal grants for a number of years and have written and lectured extensively on these subjects. I am pleased that your Committee is now focusing on some of the very critical legal issues that are becoming an increasingly important part of our intergovernmental system. In the few minutes that we have today I will highlight some of these issues which I recommend enter into your Committee's deliberations.

The Advisory Commission on Intergovernmental Relations (ACIR) in December of 1980 published a report entitled "Awakening the Slumbering Giant: Intergovernmental Relations and Federal Grant Law." The publication was intended to highlight legal developments in the grant field and the colorful title was based on a statement made by Judge Tamm of the federal Court of Appeals for the District of Columbia in the case of Southern Mutual Help Assn. v. Califano. In that case, Judge Tamm compared the state of grant law to a "slumbering giant."

The slumbering giant, as the title of the ACIR publication indicates, has awakened. There has been a literal explosion of federal grant cases in the last ten years. Hundreds upon hundreds of cases have been cited by the various district courts and courts of appeals.

Many of these decisions have arisen out of the numerous laws and regulations which impose national policy on grants and establish terms and conditions that all recipients of grant funds must follow. There are the so-called "generally applicable requirements" that are the focus of S. 45 and of legislation which I understand Senator Roth will introduce. The majority of these laws, which include Title VI of the Civil Rights Act and the National Environmental Policy Act, have been enacted since 1964 and have given rise to numerous lawsuits brought primarily by third parties who have been denied assistance under a grant, who have been denied the benefits of a grant, or have been adversely affected by a grant.

Many of these cases have defined new rights for third parties and new responsibilities for state and local governments. These rights and corresponding responsibilities have increased with the burdens imposed on state and local governments by federal grant funds and the impact of these laws is a subject worthy of close examination by the Congress. The provisions of S. 45 and Senator Roth's proposed bill are an important step toward bringing some uniformity to the policies imposed by these generally applicable requirements, but more Congressional study of this area is needed. A thorough review should be undertaken of these provisions and consideration should be given to modifying these laws to reflect the burdens imposed on state and local governments.

Indeed, this review is critical in two areas that I will briefly discuss: (1) the implementation of block grants and (2) the provision of relief to state and local officials from legal liability imposed from the misinterpretation of federal rules and regulations governing expenditure of grant funds. Let me talk about block grants briefly.

The promise that block grants will eliminate red tape and give control to state and local governments over the expenditures of the grant funds has only been partially met over the years. Grantees are assured of receiving an allocation of grant funds through statutory formula and have only to submit a single grant application or plan each year that may cover hundreds of individual programs and projects. However, recipients must still comply with the hundreds of conditions found in the law creating the grant programs and the various Acts, OMB circulars and Executive Orders that govern expenditures of all federal grant funds. This was made clear in the early development of block grants. In the early 1970's, for example, the case of Ely v. Velde, the first case in federal court to test the block grant concept, made it clear, as did subsequent cases, that block grants do not as a matter of law differ from other grant programs.

In the last term of the Supreme Court in the landmark cases of Harris v. McRae and Fullilove v. Klutznick, the Supreme Court made absolutely clear that Congress has wide and sweeping powers to impose the terms and conditions under which federal grant funds are spent and that state and local governments must comply with those terms and conditions. Block grants promise no relief from the various federal laws and regulations that govern expenditure of funds and in OMB's last count there were at least 59 different laws, regulations and the like that impose these controls. Now the importance and necessity of many of these laws such as Title VI of the Civil Rights Act of 1964 that impose important controls over the expenditures of grant funds cannot be denied. However, the impact of block grants on red tape in federal control will be illusionary and temporary as long as the Congress continues to impose new statutory controls over the expenditures of grant funds and executive agencies continue to create new administrative controls for the expenditure of funds.

Let me discuss now state and local immunity. Walter Groszyk, an attorney with the Office of Management and Budget, and I recently wrote an article entitled "Managing without Immunity: The Challenge for State and Local Government Officials in the 1980's" for the Public Administration Review. Much of my following comments draw on that article. In the article we discussed the Supreme Court's 1980 rulings in Owen v. City of Independence, Maine v. Thiboutot, and Maher v. Gagne, which when read together with other recent decisions, enunciate a set of standards under which: (1) local government may be held strictly liable for Constitutional violations even though the violations resulted from actions taken in good faith by government officials, and (2) state and local government officials may be held liable whenever a person has been injured through the administration of any federal-state or federal-local cooperative program, regardless of whether that program is related to civil rights. These cooperative programs can cover both federal grant programs and federal regulatory efforts. Furthermore, under these cases, aggrieved persons may pursue claims alleging injury not only in federal courts, but also in state court. Finally, successful plaintiffs in such cases may recover their attorney's fees from defendant officials or from their governments.

The effect of these decisions clearly is to eviscerate the once sturdy bulwark of governmental immunity and expose state and local government officials to a liability they had once thought remote. The rulings are likely to dampen state and local government enthusiasm for taking innovative and adaptive approaches toward program management, for the prospect is the more they exercise ministerial flexibility, the greater the probability their administration of that program will be challenged.

Over the past several years, there has been much federal rhetoric on devolving authority and responsibility to state and local governments. The objectives are sincere, the initiative is well-intentioned, but the federal government has so far given up little. Concededly, roles and powers that have aggrandized over fifty years are not readily or easily shed. However, even this limited beginning is threatened, and President Reagan's emphasis on turning programs back to state and local governments may go unrealized, for much of the devolution strategy centers on enhancing the management of federal programs by reducing the duplicate layers of federal and non-federal oversight and operation which presently prevail. These federal schemes for improved management, to a large degree, are predicated on the willingness of state and local government to exercise a role in administering the use and disbursal of federal monies. The recent Supreme Court decisions, however, now cast serious doubt on whether such objectives are reasonable or even achievable.

The statutory base of such results is §1983 of Title 42 of the United States Code. Under §1983, a person is liable to an injured party when (1) the person acts "under color of any law, statute, ordinance, regulation, custom or usage of any state" and (2) the person deprives any citizen or person in the United States of "any rights, privileges or immunities secured by the Constitution and laws."

With §1983, the courts, on behalf of citizens, have been drawn into areas that had traditionally been reserved for the executive branch. And there is no ready remedy for the circumstance in which the executive now finds itself. Indeed, the search for an easy solution is complicated by the nature of the recent decisions. Not only can citizens sue if they believe their constitutional rights are infringed, but they now may pursue legal remedies if their statutory rights are restricted as well. Anticipating such legal recourse and introducing palliative measures is not a simple matter for the government official, as constitutional rights, particularly those derived from the Fourteenth Amendment, are periodically defined and expanded by the courts, and new statutory rights are becoming discovered with great frequency. Under such conditions of uncertainty, it is difficult designing any system of management which can assure officials that reasonable actions and efforts on their part will secure all the rights provided citizens and immunize the official from liability.

One immediate concern of the federal government should focus on identifying available and practicable means for dealing with the cumulative effect of these decisions on the management of federal assistance programs. It also involves reassuring prospectively state and local government officials that initiative and flexibility will not be rewarded with litigation.

The effects on the government official can only be anticipated at this juncture; the court decisions are too recent and the true consequences are yet to be realized. However, certain results are likely to occur. First, much more administrative inefficiency may be introduced into the operation of assistance programs. When confronted with the prospect of culpability, managers can introduce protective measures to diminish their liability. These measures, in the form of elaborate procedures, extensive review and coordination, or manifold levels of decision and approval (all of which may sound managementally proper), could induce administrative inertia, delay, and wasted resources.

There is a tendency, as evidenced by the medical profession increasing the nature and extent of diagnostic testing to reduce the possibility of malpractice liability, to adjust the level of performance to respond to the exceptional or occasional situation, rather than establishing procedures which relate to the usual and normal circumstance. Under such a strategy, every recipient of federal assistance may then receive a standard of administrative performance designed for the exception, and which is excessive for the needs of most. Simply, government bureaucracy may turn apprehensive and become less effective, less timely, and more concerned with the impact of any action upon itself than on the recipients of the assistance it provides.

Engendering a second effect is the degree of delegation which occurs in most government bureaucracies. The government official made a party to most §1983 actions is often the highest elected or appointed official having responsibility over the function whose actions precipitated the alleged injury. In very large bureaucracies, such as those servicing social assistance programs, the actions of subordinate officials might be beyond the direct cognizance of the person in charge. But this may not alleviate the superior's culpability.

The third significant effect is induced more by the party not present as a defendant in most of these §1983 actions--the federal government. Presently, the federal government retains much more sovereign immunity than state or local governments. This disparity in burden-sharing and liability between the federal government on one hand and state and local governments on the other, can foment ill-will, insensitivity, and a general and understandable reluctance by state and local government officials to assume responsibilities for cooperative programs when the legal exposure is targeted on them.

A fourth consequence is a developing weariness of government officials who discover more and more of their time and energy being sapped in responding to legal claims and defending their actions, rather than in directing and overseeing tasks and subordinates.

There is one other major federal government concern, and that is a perception--formed not by the legal consequences of these decisions, but from an appreciation of existing attitudes and tendencies on the part of state and local government--that state and local officials may now choose not to administer federal assistance programs beyond what they are absolutely compelled to do. Even before these decisions, there was occasional rebelling over federally-imposed procedures and requirements, and, infrequently, a state or local government would even decline federal assistance on the belief the burden was not commensurate with the benefit.

I want to clearly state that in my opinion and that of countless others 42 U.S.C. §1983 provides important protections for the citizens of this country. Section 1983 was added at a critical time in our nation's history and the protections which it provides continue to help assure Americans the full protection of our laws and the Constitution. Section 1983 is an important and critical law and is a testament to what this country stands for. However, I feel strongly that the Congress must give consideration to the very serious impact that 42 U.S.C. §1983, as recently interpreted by the courts, can have on the operations of state or local governments when an official of that government misinterprets or misapplies the myriad of laws, regulations and rules governing the expenditure of federal funds. This is an appropriate subject for hearings and possible legislative initiatives to deal with this serious problem for state and local governments. The broadest range of views should be sought. I am willing to work with this Committee in an effort to address this problem in a manner consistent with enforcement of the civil rights laws.

Senator DURENBERGER. The hearing is adjourned.

[Whereupon, at 4:45 p.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

FEDERAL ASSISTANCE REFORM

WEDNESDAY, MARCH 25, 1981

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 2 p.m., in room 3302, Dirksen Senate Office Building, Hon. Dave Durenberger (chairman of the subcommittee) presiding.

Present: Senator Durenberger.

OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. The subcommittee will come to order.

The subcommittee today continues its hearings on S. 45, the Federal Assistance Reform Act of 1981, introduced by Senator Sasser, and S. 807, the Federal Assistance Improvement Act of 1981, which has now been introduced by Senator Roth. The subject matter of the legislation is generally known as grant reform.

The first hearing on this subject was held on March 11. At that hearing, we heard from several individuals interested in grant reform legislation. Senator Roth and the National Association of Counties appeared. A panel on grant law and the State Auditors Coordinating Committee also testified.

We will not be able to complete these hearings in today's session. There will be one additional hearing. We will receive further testimony at that time.

The subject of grant reform is not new to this subcommittee. In 1978, Senator Roth and Senator Danforth began their work in this area. In the 96th Congress, the subcommittee considered S. 878 and S. 904. These two bills were combined in a version of S. 878 which was reported and passed by the Senate. However, the House of Representatives did not consider the grant reform legislation. The subcommittee is now hopeful that by acting on this legislation expeditiously in the 97th Congress, we can assure favorable action by the House as well.

Although we had only Senator Sasser's bill before us on March 11, we also have a bill introduced by Senator Roth before us today. Both of these bills impose significant reform on Federal assistance programs. There are, however, important differences between the two bills which must be resolved by this subcommittee.

For instance, Senator Roth's bill provides for automatic discharge of a consolidation plan from a committee of primary jurisdiction if that committee does not act within 60 days. There is no such provision in Senator Sasser's bill.

Senator Sasser's bill provides for direct reimbursement of State and local auditors for the audit work done on behalf of a Federal agency. Senator Roth's bill would allow continuation of the current system of indirect reimbursement.

These two bills offer amendments to the Joint Funding Simplification Act in very different ways. Senator Sasser proposes the "Integrated Grant Development Act of 1981," whereas Senator Roth would simply amend joint funding primarily by replacing "may" with "shall" wherever that language occurs.

There are many provisions in each bill under the title, "Miscellaneous," which will require resolution. These differences raise issues which will be considered further by the subcommittee.

The common goal of these efforts for grant reform is to encourage the Federal Government to work more efficiently. Senator Roth spoke eloquently on the importance of this legislation and its role in bringing efficiency to the intergovernmental system.

Restructuring the intergovernmental system is an important part of the new administration's initiative to change the role of Government. By enacting broad grant reform legislation, we can not only achieve our goal, but may assist the administration in the promulgation of its policies as well.

There is some possibility that Senator Sasser will be with us for this hearing. When we scheduled this hearing, it was expected the Senate would not be in session this afternoon. However, we have a vote at 4 p.m.—and members of the subcommittee will have to go to the floor.

We have five witnesses and we can give them each sufficient time. However, I will not be questioning in length. I hope the witnesses understand that, in our efforts to finish by 4 p.m., the questions will be brief. This does not reflect any lack of interest on our part in their testimony or the concerns which are before us today. It is my intention to try to adjourn this hearing by 4.

Our first witness is Senator Carl Levin from Michigan. He was a member of the Intergovernmental Relations Subcommittee, Senate Governmental Affairs Committee. He was the formal author of a bill which makes up much of the title V in S. 45. I know he will encourage us to keep those.

Carl, we are honored that you are appearing personally today.

TESTIMONY OF HON. CARL LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator Levin. Thank you for allowing me this opportunity to come before this subcommittee to consider reforms in the Federal grants process.

As a former president of the local government legislative body, I can assure you the importance of your work and the importance of reform in this area. I was a supporter of grant reform in the last Congress, as I am now. I am happy to speak about the bill you are considering today.

In trying to conform to Federal regulations, local governments are often confounded by requirements of one set of regulations and the conflicting requirements of another. One agency says you must meet emission standards; another says you must improve gas mileage, and the goals may work at cross purposes.

One agency requires that floors be washed every 3 hours for health reasons; another says floors must be kept dry for safety reasons. The EPA requires that measurements for noise pollution resulting from airport construction be made according to one formula. The FAA requires the same measurements by a different formula. The list goes on and on.

Grant consolidation, a single audit requirement, and other reforms contained in the bills before you will certainly improve the current Federal assistance process. However, I believe, perhaps even more fundamentally, that there is a need for ways to protect and guarantee some procedural rights of State and local governments in their dealings with Federal granting agencies.

As a result of that belief, I proposed in the last Congress that the provisions of title V be added to Senator Sasser's Federal Assistance Reform Act. That title embodies my concept of a procedural "Bill of Rights" for State and local governments which receive Federal grants.

These provisions were included in the bill when it was approved by the Senate Governmental Affairs Committee last year and by the full Senate last session. They are contained in the current version of Senator Sasser's bill.

The provisions of title V would allow Federal agencies to waiver newly promulgated regulations and requirements for those State and local governments which have made a substantial commitment of time and expenditures under the superseded regulations. This could give recipients of grants some protection from revisions in grant regulations and requirements which occur in the middle of the program. A large number of problems encountered by local officials grow out of the Federal agencies' practice of changing regulations in the middle of a program. There is nothing more aggravating and costly to local governments than changing the rules in the middle of the game.

Where there is a midstream change in regulations, the Federal agency should, at a minimum, have the power—absent clear legislative intent to the contrary—to allow the local government to abide by the earlier set of regulations once work has begun or substantial action has been taken pursuant to the earlier regulations. The cost to local governments of midstream changes in regulations include not only the actual cost of complying with the changes but the cost of determining what the impact of those changes will be. In Wisconsin, for example, it costs the State $50,000 a year just to determine what changes must be made as a result of changed Federal regulations.

The waiver provision I have proposed is not intended to limit any expressed or implied waiver authority which may currently exist within some Federal agencies. This provision is designed, rather, to create uniform agency implementation of this commonsense approach.

The provision, as it is currently drafted, is unclear on one point: The intention is that the head of an agency shall not grant a waiver that violates a requirement of law or the purpose of any affected assistance program, and simple language change should clarify that.

The Local Bill of Rights would also require Federal agencies to provide advance notice to State and local governments of funding decisions in three instances: First, when a Federal agency withdraws funds from an ongoing project or program; second, when a Federal agency refuses to renew funding for a grant which had been funded in the previous year; and third, when a Federal agency withdraws a public commitment of funds for a State or local program.

In these circumstances, the agency would also be required, on request, to give the State or local government an opportunity to demonstrate why agency action should not be taken. Also, where applications for assistance are rejected, agencies would be required, on request, to provide an explanation of the reason or reasons for their action to the State or local government.

This provision addresses problems which are created by the lack of prompt Federal agency notice before changes in funding patterns are made, and the absence of any opportunity for the State or local government to learn the reasons for funding decisions. However, it is not my intention that any formal appeal or review procedure be established if this provision is enacted. The language of title V is drafted to allow considerable flexibility and informality in its implementation.

The notice required here should be given sufficiently in advance to afford the State or local government the time to request and get an opportunity to respond to that funding decision. Additionally, the provision giving a State or local government an opportunity to respond to the nonrenewal of a grant is not intended to apply where the original grant is totally discretionary, with no expressed or implied obligation to fund in subsequent years.

As a former local official, I am particularly sensitive to the need for communication and flexibility between State and local governments and Federal agencies. The opportunity for exchange and consultation not only enables the State and local governments to better administer their local programs, but it also provides the Federal agency with a meaningful review of its own grant programs.

There was a sewer program near Battle Creek, Mich., where the Federal Government—after requiring the local government to put up a local share, and after that money was spent planning the sewer improvement—changed the regulations on Federal eligibility so that the sewer plan was no longer eligible.

A number of years ago, the Federal Bureau of Prisons notified Detroit that it wished to build a Federal detention center in downtown Detroit across the street from the Federal courthouse. The city agreed and set aside some valuable land which remained off-limits to other development for a number of years. The Federal Bureau of Prisons requested an appropriation from the Congress and the appropriation was approved. Then, years later, the Federal Bureau of Prisons, without any notice to the city, decided to cancel the project and so informed the Appropriations Committees of the House and the Senate which began reprograming the funds.

The consequences of this decision were quite damaging financially to the city; the valuable land had sat idle for years, generating no revenue and forestalling needed development. Yet the decision was not communicated directly to the city and was only revealed eventually by rumor.

When a local government has acted in reliance on an announced Federal project, the least the Federal agency should do is to notify the local government prior to reaching a final decision to drop the project.

Although the examples I have mentioned are based on my experience in Michigan, I know that most of my colleagues have heard similar examples from local governments in their own States.

This title and the other reforms proposed offer the opportunity to insure fairness and commonsense and at the same time contribute to the overall simplication and streamlining of all Federal assistance programs.

I commend this subcommittee for its prompt efforts in considering Federal grant reform. I hope that the subcommittee's final version will retain the Local Bill of Rights concept as an integral part of this reform.

Senator DURENBERGER. Let me ask you one question dealing with some of your last examples—the Federal Government getting out of the business entirely. We might relieve the cities of Detroit, Battle Creek, and other places of those problems.

Senator LEVIN. There are bigger ones in the process.

Senator DURENBERGER. There is a lot of talk about moving in that general direction, including the administration's recommendations of moving from categoricals to block grants. In our previous hearing we heard some concern for the procedural rights in block grants. They may become more important under the block grants.

Do you have any thoughts on the block grant process that would be helpful to States and cities in their making the transition from categoricals to block grants?

Senator LEVIN. I would have to give some thought to that, Mr. Chairman. I have not thought of that aspect of the block grant issue. It deserves some thought that I have not put into it.

Senator DURENBERGER. I have no further questions. I appreciate your initiative in this area and for taking the time to appear before us.

Senator LEVIN. My pleasure.

Senator DURENBERGER. Our second witness this afternoon will be the Honorable Richard Snelling, Governor of Vermont. Governor Snelling was with us a month ago to discuss the State and local implications of the budget process. We are pleased to have him back so soon. His testimony is always useful to the subcommittee. In addition to his role in the State of Vermont, Governor Snelling has also aided in the work of our subcommittee. We consider him an expert.

Governor, we welcome you.

TESTIMONY OF RICHARD A. SNELLING, GOVERNOR OF THE STATE OF VERMONT, REPRESENTING THE NATIONAL GOVERNORS' ASSOCIATION

Mr. SNELLING. Thank you, Senator, for the opportunity to appear before the subcommittee. I think the subcommittee and the full committee have done so much work on this general subject that it seems totally unnecessary to emphasize the importance of it. I feel

I should anyway, because perhaps the most significant single determinant of whether the broad stroke of the President's budget cuts and budget shaving programs can indeed be implemented without causing serious problems at the local level may very well be the question of a timely change in the capacity to consolidate grants and to remove those rules and regulations which are inhibitors to the State and local governments in accomplishing the purposes which the U.S. Congress intends they should be able to accomplish when it makes available assistance of any kind.

I am very pleased to find recommendations of the National Governors' Association contained in the report of the Budget Committee, which I would like to read. I think it is clear that they speak directly to the need for prompt action in the area of Federal assistance and Federal assistance reform.

The Budget Committee added this language:

> State, local transition flexibility, many of the funding recommendations made by the committee are based on the assumption that increased flexibility will be available to State and local governments.
>
> Therefore, it would be appropriate that whenever the committee recommends the reduction of funds available to State and local governments, it should recommend, where possible, program revisions which increase the flexibility permitted to State and local officials to manage these funds, so that the needs of program beneficiaries are met most effectively.
>
> Revisions could, first, consolidate similar programs in the block grants and eliminate laws, rules and regulations relating to these grants in favor of goals which State and local governments can meet in the most effective way possible.
>
> Second, eliminate laws and regulations relative to program areas where substantial cuts are made in order to allow local governments a range for the flexibility to minimize the impact of the cuts.
>
> Third, make provision for adequate lead time to adjust State and local laws and practices to the new funding levels or changes authorizing legislation.
>
> Four, eliminate the requirement that units, advisory boards or other bodies be established for receiving funds.
>
> Finally, modify mandates not fully funded by Congressional appropriations.

Senator, I believe without the work of this subcommittee in considering both Senator Sasser's and Senator Roth's proposals is very central to the implementation of that statement of intent by the Budget Committee, and time is a wasting.

This subject has been before this body, and indeed before numerous study commissions, now for more than a decade. The advisory commission has spoken loud, often, and clearly about the need for this legislation. So has the General Accounting Office. And so have numerous Presidential and congressional study commissions, for example, that are concerned with paperwork. The National Governors' Association has been speaking about the need for this kind of legislation and this kind of reform in the design of grants and other programs of assistance for nearly a decade. Not quite so long, but with equal vigor, the National Conference of State Legislators and others have pinpointed the problem.

Senator, the President has said that State and local units of government should be able to perform the services that it is intended they perform despite the budget cuts. Because—and I think the "because" is a very important condition—the President intends that there will be dramatic changes in the design of grants, and hopes that Congress will enable that to come about.

That is a generality. The task now is to come, as quickly as possible, to the specifics of reorganizing assistance programs as we come to specific bottom line figures for budgets.

Senator, I would like to leave with you this Green Book, which is Vermont's answer to the Black Book. The National Governors' Association will shortly have a Green Book, which will represent the thinking of the National Governors' Association. For the moment, each one of these green pages represents——

Senator **Durenberger**. Will it be 50 times the size of that?

Mr. **Snelling**. No, but maybe twice that size.

This book was prepared by the program managers of the Vermont State Government. Each program manager was asked to take the President's budget proposals and analyze them for their impact on the State of Vermont. Those are the white pages. He was then asked to determine the specifics of the oft-repeated statements that it will be necessary to change the grants designs, rules and regulations. Each program manager was asked to assess all of the rules and regulations that needed changing.

The green pages list some 3,000 changes we think will be necessary to make good the promise of the President of the United States—changes so that the State and local governments will have sufficient flexibility in the administration of assistance programs to meet the task before them.

I very much appreciate the work you have done, Senator, and the work of Senators Sasser, Roth, Nunn, Pryor, Baucus, and others, to get us ready for this moment. I would like to speak briefly about some of the specific elements of the Roth and the Sasser bills. I should say that generally the Governors believe that the stronger the version—that is the greater the latitude permitted to the President in shaping assistance programs and the greater the latitude permitted to those who provide the services—perhaps the better off we will be.

In that connection, I should mention that I have written to Senator Roth, and would like to leave with you as well, a proposed Federal Economic Emergency Act. This act would provide the President of the United States with an even broader capacity to redesign and consolidate grants which is not provided in either S. 45 or in Senator Roth's proposal.

I would hope that it is possible to act promptly enough on these proposals which are before us so that would not be necessary.

On the other hand, the present system requires the budget to move so much faster than a change in assistance design can, that it may very well be necessary to provide some kind of short-term remedy, such as that which is already defined by the language of the Budget Committee and spelled out in the proposed Economic Emergency Act.

Referring particularly, however, to the Federal Assistance Improvement Act of 1981, the Governors do believe that title I is an urgent element of that act. One feature which we like very much in the Roth bill is that which allows committees with primary jurisdiction 60 days and other committees 15 days in which to act. Certainly, a vital component of this particular title is a procedure for by-passing committees which have had an adequate opportunity to consider legislation but failed to permit floor action on it.

Senator, if it was the will of the Congress over the years to provide flexibility to State and local governments in the implementation of grants, perhaps they would have done it long ago. The urgency may very well be that it is considered to be a part and parcel of the proposed budget reductions. The thesis is that 25-percent reductions in grant programs can be absorbed by the more efficient and the better-directed programs available through consolidation and block grants.

So we no longer can afford to make it possible for funds to be reduced, or for those funds, which do come down, to be targeted in ways which may very well miss the point.

I also think it is important, as I read title I, that we make it clear that it is not necessary for plans to receive a favorable report or no committee action in order for them to be eligible for the fast tracks proposal contained in title I. Were that to be true, in order to block consolidation of the plan, a committee would need merely to file an unfavorable report. I hope we would eliminate this loophole to allow careful consideration of all plans.

Also, there may be another loophole. Perhaps I am not reading the language correctly. In order for there to be time for other committees to review the consolidation plan and still permit floor action within 90 days, all nonprimary committees must consider the plan concurrently. I am not sure the present language is clear enough on that matter. Suppose three or four committees were to ask for the time provided. If those committees' consideration time were not running concurrently, then the primary goal of this bill would be aborted.

Senator, I think that title III is also very important and a key word there is "certification." The Roth bill suggests greater reliance on certification of State laws and practices as an enforcement mechanism. Senator Levin and others have made quite clear the present capacity to make it impossible for a State to implement a consolidation program or often, as a matter of fact, to use a program clearly intended for use in ways which would be most effective in that State.

Sometimes the length of time it takes to accomplish that and to meet the requirements of each Federal agency that may be responsible is entirely too long. A plan of certification can be a very important step in that direction.

With respect to title V, I would like to speak briefly about the concept of portability. You know, Senator, the local governments, the National Conference of State Legislatures and others have long felt that general revenue sharing was, in many ways, a model program. What we like about revenue sharing is that it does accept the premise that the Congress of the United States has the capacity to identify social needs, and to establish broad social policies which properly can be goals for local governments throughout the United States.

The capacity to achieve those goals—whether it is levels of welfare assistance, education, highway, transportation capacity or the like—is very desirable.

As you know, in the field of education, many States have designed, and many more are working on, so-called power equalization programs in order to equalize the capacity of local communities to offer adequate education. State aid to education formulas have a long history, and perhaps even a brighter future.

Basically, the glory of the general revenue sharing concept was that it did provide a power equalizing capacity, which the States, or in this case the local communities, can use in ways most important to them and where they experience the greatest need.

Now, there is a way that this can be accomplished through the provisions of title V and the allowance to States to submit plans for retargeting a portion of Federal aid for higher priority items. This is very similar to the proposal offered by the National Governors' Association which we referred to as "portability."

What it basically says is that, if the Federal Government sees a proper area for Federal assistance, we ought to recognize that it probably cannot arrive at a reasonable target—a target which will be equally reasonable for all 50 States as a measurement of the degree of need or the applicability of funds.

In all States there is a need for programs in the fields of health or welfare or education. It may very well be that the program is already in existence in a given State or, for that matter, in the geography of the State. The rurality of the State, or the like, might make it much more difficult to do the necessary job in the field of health care, say, having experienced the problems of a rural State in the area of health care. It may be that the funds directed by any kind of a reasonable formula may be very inadequate in one State in that particular area of Federal interest. And it might be generous in another State.

Conversely, there might be another area where exactly the reverse were true. With this concept of portability, Vermont might say, "We think we do well in the field of education and the field of skills education." This is a need, a social need, for which we receive Federal funds. I am talking particularly about those programs available under the education program for vocational education or, for that matter, title VII and the like. We consider, relatively speaking, those funds to be more ample than the funds available for rural health care.

So the concept of being allowed to take a percentage of the funds, for which a State is eligible under any Federal title, and apply them to any other area, described by Federal legislation as being an appropriate area for Federal expenditures, makes a considerable amount of sense to us.

Mr. Chairman, I think it might be better for me to skip over the rest of the written testimony and make myself available to answer any questions that you might have.

Perhaps the question of timing is the most important one in the minds of many Governors. The Roth proposal, in our judgment, as I have mentioned, has some points of preference in terms of scope offered, compared to the Sasser proposal. The one thing which I think we all would agree on is that it is urgent that we address the problems of consolidation and deregulation right now, if we are to make a proposal of the President of the United States in the field of budget allocations work.

Thank you, Mr. Chairman.

Senator DURENBERGER. Thank you very much, Governor.

Let me start with the issue of consolidation. You indicated that would be the most important title to the bill. Could you tell me why consolidation is more important, for example, than establishing a management system for the cross-cutting requirement?

Mr. SNELLING. Perhaps it is a mistake to pick one of several important things as being more important than another. They are both very important. In terms of priority, I would say that consolidation has some elements of urgency for the simple reason that it is so difficult, in my judgment, for the Congress to define the beginning and the end of a problem.

Let's take one that we understand in Vermont. Which is more important, home energy or emergency fuel assistance to the poor who have not weatherized their houses? I submit when those two program are consolidated, that from the management point of view—using a perk chart, if you will—it becomes apparent the more rapidly you accomplish weatherization, the more you will have available from any grant of a given size to meet the needs of fuel assistance.

If, as a matter of fact, those two problems are separated, as they are at the present time in Federal law, then the relationship between the two is not perceived. The mechanisms of implementation sometimes run very, very wide in the market.

Senator DURENBERGER. On the same subject, one of the differences between the two bills before us is the limitation placed on consolidation under title I. The Sasser bill restricts consolidation of programs that have the same beneficiaries, whereas the other bill puts restrictions on the same budget function.

First, why is any restriction necessary at all? Second, what is your view on whether we have to choose one or the other, or just how narrowly or broadly that limitation should be?

Mr. SNELLING. Senator, I think there are times that prior works and history is a great asset—in the price documentation and exploration of ideas. But there are also times when the fact that a bill has been around or a concept has been around for a period of time, it would actually be a disadvantage. Because the bill came forth under one set of circumstances and if those circumstances have changed dramatically, then some underlying assumptions need to be changed.

I agree with you that there ought not to be conditions. The reason is that since S. 45 had its origins, we have decided to curtail the overexpenditures of the Government of the United States. When you start cutting $48 billion from less than $100 billion—when you cut between 35 and 40 percent of all of the moneys allocated to State and local governments in the assistance program, it becomes untenable for the Congress to suggest it knows precisely how broad the clientele should be for a particular service, or precisely what services should be performed.

Take the case of medicaid, for example. The legitimacy of a cap on medicaid certainly depends on the ability of the States to see what are the essential services. There is a notion that the Congress should maintain a requirement that seven or more services are essential and all who apply under certain circumstances should receive the service. It will cap assistance in those areas reaching adequacy as mandated by the Federal Government that are unfunded. Of the things I think they have spoken about most effectively for a long period of time is it "just ain't fair" to mandate for what the Congress will not pay.

Senator **Durenberger**. On the issue of portability, all of us like the term. We like the concept. We like the flexibility. We like all the virtues that are associated with it. We all see ourselves as responsible, responsive public officials.

You gave us one illustration in your testimony how portability might work in regard to priorities within a State—portability, for example, going from education to rural health. That is one of the concerns that was expressed to some of us by constituents whose orientation is toward education—let us say certain kinds of special education—where the needs are greatest in large cities as opposed to small towns and rural areas.

Suppose the State legislature makes the judgment that rural health care is a lot more important than education. What happens to the needs of special education in this whole portability process?

Mr. **Snelling**. Senator, that question cannot be answered without a little philosophy. The question is: What are States; what are local governments? Are they wards who must be protected from bogus impulses or tendencies to be profligate? Or are they the sources, after all, of all the funds which the Congress renders in ways of assistance?

Are State legislators accountable? Is it only the Congress of the United States that can make sure that funds collected at the State, and redistributed, are wisely spent? If it were true they are not accountable, then it would fall to the Congress of the United States to determine precisely where the funds should be allocated.

If, on the other hand, the premise is that Congress should decide broad policy and the goal is to find the most effective possible implementation, then we have to permit the possibility that States can implement some programs more easily than the Congress might think they can. Because of history, geography, and population mix, some others require considerably more funds than might seem to be the case to a Senator or Congressman from another part of the country. It is really impossible for the representatives of Florida to totally perceive the circumstances under which various social services programs are rendered in Alaska. So, were we to ask for the capacity to spend money in areas not acceptable by Congress as proper areas for expenditures, that is one thing. Were we to ask for total portability, that is another thing. But if you were to say, for example, that States could transfer up to 10 percent, or some percentage of the funds for which they were eligible under any Federal act, to any other program described by the Federal program as being responsible, you would be more likely to see that funds were not wasted. You would see that they were directed very specifically to where they would do the most good in realizing congressional good.

Senator **Durenberger**. I do not want to dwell too long on that. The issue is not whose judgment prevails on these issues, but who has the resources.

Mr. **Snelling**. Excuse me, all the resources go to the States, except those which are lent through the Federal process to Federal programs.

Senator **Durenberger**. But then you have to tell that to the people from the 40 States. Ten States need assistance regarding child abuse. When they cannot get the attention of the 40 States, they come to Washington. Those are the people who are a little harder to persuade. I am not necessarily taking that viewpoint. I am just trying to show the concern about the portability feature.

There is another concern that came up in our first set of hearings—the issue of grant law. You made some reference to it in your statement. Is it your view that we may need to add some language to the Roth bill—which is the portability bill—that is needed to protect you and the Governor, in your legislation, from the kind of lawsuits that will come up so that portability can be useful?

Mr. **Snelling**. Absolutely. Without that protection the history already is rather clear that the courts will give interpretations which will seem added to the Congress of the United States. I think that has to be spelled out in the act and statute.

Senator **Durenberger**. My last question is about the figure of $5 billion used for paperwork. Where does that figure come from?

Mr. **Snelling**. From the paperwork simplification.

Senator **Durenberger**. The report you did last year?

Mr. **Snelling**. Yes.

Senator **Durenberger**. Thank you very much for your presentation and your continued contributions to improving the Federal assistance issue.

Mr. **Snelling**. I appreciate the chance to appear before you. I would also like to leave with you a copy of the proposed Emergency Powers Act, which was addressed to Senator Roth.

[The prepared statement of Governor Snelling follows:]

PREPARED STATEMENT OF GOVERNOR RICHARD A. SNELLING, STATE OF VERMONT

Mr. Chairman and members of the subcommittee, my name is Richard A. Snelling. I am Governor of the State of Vermont, and I serve as Chairman of the Committee on Executive Management and Fiscal Affairs of the National Governors' Association. I am appearing today as part of an effort to strengthen the partnership between the states and Congress for the reform of the federal system.

When I testified before this Subcommittee last month on the FY 1982 federal budget, I made the point that significant reforms in federal grant procedures must accompany the projected budget reductions to keep lowered spending levels from making unacceptably deep cuts in service levels. The results of the analysis we recently completed on the President's March 10 proposals lead me to reemphasize the point here. According to our calculations, the grant funding level proposed by the President for FY 1982 is 14.5% below what is necessary to maintain current services. By 1986, all grants except those allocated to individuals would purchase 55% less than they buy today.

It is imperative, therefore, that we depart from a business-as-usual approach to grant reform. Reform initiatives must be placed at the very top of the agenda, so that we can direct every possible penny of government revenues to helping our citizens and stop throwing it away on unnecessary paperwork and administrative requirements. Moreover, it is time for the federal government to recognize the competency of states in setting priorities and administering programs. Enactment of the reforms we are discussing today would go a long way toward restoring balance to a federal system that has tilted too far toward Washington.

The federal aid system needs a tune-up. Through the 500 separate categorical programs, enough paperwork is imposed on state and local governments to cost some $5 billion for them to complete. At last count, there were 7 different highway safety grants; a half dozen grants for forest-related programs; 23 for pollution control and abatement; 36 for social services; and 78 for elementary, secondary, and vocational education. By some estimates, there are over 1,000 separate mandates imposed on local governments. No wonder the system is not running smoothly; no wonder the percentage of Americans that believe the government will "do what is right" fell from 77% in 1964 to 34% in 1976.

The bill on which Senator Roth has worked for the last several years, and S. 45, which Senator Sasser has introduced along with Senators Nunn, Pryor, Levin and Baucus, provide the framework for the kind of reform that Governors think is necessary. As you may know, when the Governors and State Legislators met on November 25 to agree on a joint agenda for federalism reform, we placed enactment of this legislation first on our list of priorities. We greatly appreciate the work of the Committee chairman and of Mr. Sasser, who led last year's successful effort to win Senate approval of an omnibus grant reform bill. We look forward to working with you and other members of the Committee and Subcommittee and with the Administration to achieve early enactment in the 97th Congress.

Although to my knowledge President Reagan has not yet announced his support for the bills we are discussing today, I hope that he will soon do so. The Administration has recognized the need for progress toward federal aid reform and has developed a major initiative for the improvement of the federal regulatory process. Moreover, the President has proposed grant consolidations in health services, preventive health, social services, emergency assistance, aging, elementary and secondary education, highway, and youth training programs. Finally, he has indicated his intention to rely on the experience and expertise of state and local governments to deliver services. The Federal Assistance Improvement Act of 1981 and the Federal Assistance Reform Act of 1981 provide the Administration with the tools it needs to advance its reform agenda.

BACKGROUND ON THE NEED FOR REFORM

In some instances, opportunities for increased efficiency and effectiveness are hard to identify, but today we are discussing an area which has been highlighted continuously as a prime producer of red tape. Massive resources have been invested in studies of the federal assistance system, and the resulting reports repeatedly describe the same chaotic, uncoordinated system. I would like to highlight for the subcommittee the findings of some of these major studies and their relationship to the bills we are considering today.

The Advisory Commission on Intergovernmental Relations (ACIR) study on the federal grant system consists of 14 volumes and took three years to complete. ACIR found that despite some consolidation, the number of assistance programs is increasing and the programs are becoming more narrow. Titles I and IV of Senator Roth's draft removes the most serious obstacles to grant consolidation and integrated grant development.

ACIR also concluded that federal regulations involving national policies, in such critical areas as environmental protection and equal employment opportunity, have become fragmented and cause conflicts not only among levels of government but also among federal agencies. Title III of Senator Roth's bill would streamline the development of these regulations and bring consistency to compliance procedures.

ACIR found further that federal grant administration has not been able to compete successfully with other important national issues for the attention of the President and his top staff, including OMB. The Roth bill provides the President with new opportunities and gives OMB new powers for coordinating federal agencies and implementing the provisions of the bill relating to rulemaking audit reform and integrated assistance.

The General Accounting Office (GAO) and the Congressional Research Service (CRS) have both conducted studies (e.g. CRS's Federal Constraints on State and Local Government Action and GAO's Federally Assisted Areawide Planning: Need to Simplify Policies and Practices) that identify the same serious problems. The Commission on Federal Paperwork issued a report on Federal, State and Local Cooperation listing 34 recommendations to improve the federal assistance system, several of which are included in the Roth and Sasser proposals. Among these are grant consolidations and agency authority to certify state and local compliance with administrative policies associated with federal programs. In the letter transmitting the final report to the President, the Commission Chairman wrote:

"Many people feel, and the Commission agrees, that a multi-million dollar wall of paperwork has been erected between the Government and the people."

The evidence of this wall of paperwork has continued to mount over the last several years. The National Governors' Association report Federal Roadblocks to Efficient State Government highlights the major obstacles in the grants-in-aid system that would be reduced with the passage of the Federal Assistance Improvement Act of 1981.

There is also full documentation of the problems in the audit field. Over the past fifteen years, numerous federal reports have demonstrated the duplication, waste and inadequate audit coverage caused by ineffective coordination among auditors of different federal agencies and between state and local auditors. The title of a 1979 GAO report, Grant Auditing: A Maze of Inconsistency, Gaps, and Duplication that Needs Overhauling (June 15, 1979) is a perfect summary of the situation. In the report, GAO cites one city in Indiana that was audited more than 700 times over a five-year period. In another case, six different auditors (federal, state, city, and CPA firms) audited a non-profit agency nineteen times over a two and a half year period.

Mr. Chairman, the issues are clear, the research is completed, and the results are in. The Roth and Sasser bills contain reforms needed in the federal assistance system.

CONGRESSIONAL ACTION NECESSARY

Congressional action is now required. The last time Congress systematically revised the intergovernmental system was in 1968 when the Intergovernmental Cooperation Act was passed. This landmark legislation set the agenda for reforms in the 1970's. The bills we are considering today set the goals for reform in the 1980's. We are committed to working with you and with the House of Representatives to ensure final action on this legislation before the 97th Congress adjourns.

SPECIFIC COMMENTS ON THE FEDERAL ASSISTANCE IMPROVEMENT ACT OF 1981

Mr. Chairman, I would like to turn now to the comments I have on the language in the legislative proposals before us. Unless otherwise noted, I am referring to Senator Roth's bill because it is stronger in some key areas than other proposals and is therefore preferable to us.

Title I—Federal assistance program consolidation

Consolidation of federal grant programs is a principal objective of the federalism reform effort of the National Governors' Association. Governors have supported block grants in such areas as elementary and secondary education, community and economic development, non-Medicaid health programs, social services, energy, and environmental resources.

The Governors support streamlined procedures for congressional consideration of grant consolidation proposals. One of the vital components of such a process is a procedure for bypassing committees which have had adequate opportunity to consider consolidation legislation but have failed to permit floor action on it. The Roth bill—which allows Committees of primary jurisdiction sixty days and other Committees fifteen days in which to act—has such a component.

In reading Title I of the Roth bill, several points occurred to me, and I have outlined them below for your information:

Effective Date of the Presidential Consolidation Authority.—The President should be empowered to use the authority outlined in Title I as soon as possible, to permit timely congressional consideration of the block grants the Administration is now developing.

Negative Report by a Committee of Primary Jurisdiction.—As I read Title I, only those plans on which there is a favorable report or on which there is no committee action can come to the floor. In order to block consideration of a consolidation plan, therefore, a committee would simply file an unfavorable report. In order to ensure careful consideration by committees of all consolidation plans, I would favor the elimination of this loophole.

Consideration of Plans by Non-Primary Committees.—In order for there to be time for other committees to review a consolidation plan and still permit floor action on it within the ninety-day period, all non-primary committees must consider the plan concurrently. This should be specified in the statute or in report language.

Title II—Financial management and audit of Federal assistance program

A long-standing goal of the Governors has been to improve state audit capability and to simplify the federal-state audit relationship. It was a group of Governors who in 1975 encouraged Treasury Secretary Simon to undertake a major study of the barriers that precluded effective audit cooperation between states and the federal government.

The recommendations of the Treasury study, as well as recommendations growing out of studies by the General Accounting Office and the Joint Financial Management Improvement Programs, have been available for several years. The Office of Management and Budget issued a circular some 18 months ago. But the problems that concerns us still exist.

Two of the principle problems are effectively addressed in Title II of the Roth bill and S. 45. They are: The reluctance of federal agencies to rely on audits performed by independent qualified state auditors or auditors retained by state governments; and inadequate means of reimbursement for the audit work performed solely to satisfy federal needs.

There is general acknowledgement by experts at both the federal and state levels that implementation of Title II would produce more efficient as well as more effective audits.

I understand that the National State Auditors Association and the Municipal Finance Officers' Association will be providing you with detailed comments on this title.

Title III—Administration of generally applicable Federal assistance requirements

This title addresses those federal requirements generally applicable to most federal programs (the Office of Management and Budget listed 59 of these in a recent study) and directs the President to designate a single federal agency to establish rules for the implementation of crosscutting requirements.

Law or custom has allowed each assistance program to develop its own compliance procedures in such areas as labor practices and citizen participation. Examples of the effect of these repetitive compliance procedures are limitless. However, there is evidence of success in experimenting with new approaches. In the state of Washington, for instance, the state saved $50,000 in the cost of soliciting public comments under the Title XX plan by consolidating public advertising requirements for Title XX and related programs. This was accomplished under a pilot project underway at the Department of Health and Human Services. Initiatives of this type would receive needed encouragement with the passage of Title III.

As one solution to the current problems, the Roth bill suggests greater reliance on certification of state laws and practices as an enforcement mechanism for federal crosscutting requirements. This concept is one that, if it gained wide acceptance, would contribute to reduced administrative burdens, improved accountability, and a better federal-state relationship. I commend the Senator for suggesting the approach and hope that agencies will apply it frequently in the future.

If congressional intent to encourage simplification, reduce the overall administrative and cost burdens of crosscutting regulations on recipients, and eliminate unnecessary or infeasible requirements is achieved, enormous progress will have been made.

NGA is now compiling a list of onerous and costly regulations. Some crosscutting requirements may be included in the list, and we will forward it to you when we have completed it.

Title IV—Joint Funding Simplification Act Amendments

When former Governor Carroll testified before this Subcommittee in 1979, he described the successful experience Kentucky had with joint funding as follows:

"In my own state of Kentucky, we have been experimenting with integrated grants and joint funding since 1973. We became interested in the process when we reviewed the administrative requirements placed on our sub-state districts and found that the monthly phone bill was paid with 14 separate checks because that was the number of federal programs involved; time sheets were kept by the hour as demanded by federal regulations; and 30 percent of staff time was spent working on federal paperwork.

"Under joint funding, Kentucky eliminated 130 state contracts, 91 federal-state applications and 240 separate federal-state-local 'required' documents. At the same time, we developed one basic application format for eight federal and six state agencies, one basic fiscal year, one common financial and narrative reporting system, one common monitoring system, one common completion report and one uniform accounting system."

We appreciate your continued interest in this program and support the changes proposed by Senator Roth and Senator Sasser.

Title V—Integrated assistance

A new proposal in the Roth bill would allow states to submit plans for retargeting a portion of federal aid they receive for higher priority programs. This concept is similar to a "portability" concept I developed as an effort to preserve the best features of the General Revenue Sharing program.

As you know, revenue sharing funds are used by recipients for a wide variety of purposes. State governments put their money into everything from elementary education to mental health, demonstrating the diversity of the states and the variety of priority needs they face. States have felt the absence of these flexible funds, and they will feel it more sorely as the overall level of grants declines.

The "integrated plan" or "portability" concept offers an opportunity to build some of the needed flexibility back into the grants-in-aid system. I firmly support this idea.

In working on this section, it may be helpful for the Subcommittee to consider how it could strengthen the authority of grant recipients to implement an integrated plan. In effect, by permitting recipients to transfer funds between programs, Title V puts them on a par with the Appropriations Committees. I hope we can give further thought to strengthening the position of grant recipients and protecting them from court challenges when they use the opportunity provided in Title V.

Title VI: Miscellaneous

Single State or Local Agency or Organizational Unit Provisions.—The amendments proposed to the Intergovernmental Cooperation Act would extend and strengthen the Act's single department or agency waiver authorization to cover requirements for a single administering bureau or other sub-agency organizational unit. This provision is important, especially for states and local governments that might be reorganizing their administrative structures. Perhaps the best known example of a problem which arose and could not be resolved in the absence of the proposed provision occurred in Florida. The state sought to realign its human services agency to coordinate the many programs under its jurisdiction by providing one-stop intake and referral for its clients. Florida encountered a provision in the Vocational Rehabilitation Act that required state umbrella human service departments to create a single organizational unit with sole responsibility for vocational rehabilitation. This conflicted with the coordinated approach that Florida wanted to adopt. The state applied for a waiver of the VR requirement, but HEW concluded that it did not have the authority to grant the waiver for a sub-agency organizational unit.

It seems to me that a state ought to be held accountable for the service it delivers, not for its organization chart. I hope the Subcommittee will support the expansion of the single state agency concept as provided in the Roth proposal.

Maintenance of Effort.—The maintenance of effort provisions in the Roth proposal merit the Subcommittee's support. The provisions require that maintenance of effort be measured on the basis of recurring expenditures, thereby eliminating problems which have arisen when states have made extraordinary capital or other expenditures and then have been expected to allocate the same amount in subsequent years. They provide a fair remedy in instances where state expenditures drop below the maintenance of effort level; federal aid would be reduced proportionately to the state reduction rather than cut off altogether. They provide flexibility in cases of severe fiscal distress, and they introduce uniformity into an area that has been confusing and complicated.

State Oversight of Federal Funds.—The language proposed in the Title V of the Roth bill would be helpful in stemming federal interference in established state accountability systems.

Two items we hope will be included in the bill reported by the Subcommittee in addition to those we have already mentioned are as follows:

Regulatory Flexibility.—S. 45, Senator Sasser's bill, contains a provision that would permit state and local governments the option of continuing to comply with existing regulations when requirements are revised. This could be a major relief to state and local governments.

In working on the NGA Roadblocks study, we found that between November 20, 1975 and January 7, 1976, 26 issues of the Federal Register contained 31 EPA air pollution items. This translates into an annual rate of 270, or more than one for every working day. Between July 1975 and March 1976, 359 changes and additions in the regulations for the program were published in the Federal Register, and 77 new rules were proposed.

This example illustrates the need for a provision of the type contained in the Sasser bill, and I urge the Subcommittee to review what mechanisms might be encouraged to achieve the purposes of this section. Possibilities include greater encouragement by OMB of agency waiver usage and review of existing waiver authority to strengthen it and assure wider acceptance by federal agencies.

Advance Appropriations.—The ACIR study I cited earlier in my testimony found that uncertainty about the level of funding from year to year is a major problem in the grants-in-aid system. Early drafts of the bills we are discussing today urged use of the advance appropriations process as a means of increasing the ability of grant recipients to manage programs well over the long run. I hope you will consider adding a provision of this type to your bill.

CONCLUSION

In conclusion, Mr. Chairman, enactment of the Roth omnibus grant reform bill is a top priority of the National Governors' Association. We view it as the cornerstone of a congressional effort to simplify the federal aid system and provide increased flexibility for states at a time when the need for reform is critical. We pledge ourselves to work with you, with other Senators, with the House of Representatives, with the Administration, and with public interest groups to secure its passage.

Senator **Durenberger**. Our next witness will be Representative Patrick Sweeney, who is in the Ohio State Legislature. Representative Sweeney is testifying on behalf of the National Conference of State Legislatures. We are pleased that you are here today. This time is busy for all legislators in whichever capital they happen to work.

TESTIMONY OF PATRICK SWEENEY, REPRESENTATIVE, OHIO STATE LEGISLATURE

Mr. **Sweeney**. Thank you, Senator Durenberger. It might be suitable to know that yesterday our budget committee announced to our finance committee that the executive budget as introduced by the budget was $500 million short of what was anticipated. That is not counting what we will even actually see coming out of the Federal side.

Part of the problem that exists, I think, is manifested in the proposals that are before this subcommittee. I have prepared my remarks and hope to submit them and some documents for your record. I would like to summarize briefly what the approach of the National Conference of State Legislatures has been.

Our chairman of the State Federal Assistance Committee has presented this subcommittee with a copy of our statement on the agenda for Federal reform, as adopted by the National Conference of State Legislatures. The point I wish to stress is that Federal assistance reform is the centerpiece, along with the sorting out of responsibilities of the various levels of government. The current maze of some 500 overlapping categorical grants is symptomatic of government inefficiency and a lack of trust and communication.

It is essential that improvements be made as a sign of hope that the government can improve. The basic grant reforms called for in this agenda include consolidation, streamlining crosscutting requirements and appropriating funds 1 year in advance of when they are spent.

I have admired Senators Sasser and Roth and their commitment. I hope that that commitment will see itself in action in the Senate once again, as we saw last year with the bill—the substance of which is in S. 45—to comport with a real strong agenda and voice in legislation in the area of consolidation and Federal reform.

The second major focus for this year is the President's economic recovery program. It appears that he is using the congressional budget process to enable the Congress to consider, in a short time frame, a wide range of program changes. I have read that he has proposed to consolidate 130 programs into 15, and to eliminate 95 programs entirely. I have noticed that in the consolidation proposals, most major grant programs are being included while hundreds of less significant grants remain. For this reason it is imperative that grant reform legislation be enacted. Even if the Congress were to adopt every single administration proposal, the end result would be a maze of hundreds of grants with crosscutting requirements, reporting forms and so on.

In the State of Ohio two-thirds of our employees in the State Department of Education are Federal employees. As the proposal hits the Hill from the Department of Education, we expect that State capitals will be bypassed in the areas of the two major categorical grants, handicapped and older ones. There are some 113 in those 2 accounts. We will have to roll over into the State general revenue fund, rather than let them go. We will find uses to play roles of handicapped and the others. That additional burden, I think, is going to run through the gamut of all the changes, consolidations and cuts. Because we will remain with the requirements of coordinating and assistance, that action will be taken at the local district.

Let me express what many legislators have been voicing. The administration is proposing serious reductions in funds for the promise of State discretion. These ingredients were not high on Congress' priority list in the recent past. It is still possible that while the 25- to 30-percent reduction for the proposed block grants are enacted, all other requirements may be maintained. States will be in an impossible position in that case. The provisions of the Federal Assistance Reform Act could provide us with some room to operate.

Finally, I think it is clear that the Congress should take an active role here. In my State of Ohio, we provide State aid to localities without excessive strings. For example, Ohio, along with most other States, provides funding for local school districts through a finance formula. We also provide localities with aid through our local governments. Our revenue fund, which is used to receive a passthrough of 3.5 percent of all sorts of income—sales tax and corporate franchise taxes, distributes these moneys to local governments.

Let me now comment on the major part of S. 45 and S. 807. Let me also at this point indicate that I came here on short notice, saw one glimpse of last year's model of S. 45 and have not had an opportunity generally to digest all of the differences. I am confident that from the briefings I had this morning and this afternoon that they meet pretty well with the approval of the legislators from the posture that we have taken through our agenda.

The consolidation title is essential and the major difference reflects the compromises of last year's S. 878 that we needed to gain approval. Allow me to comment here. Even with the streamlined procedures laid out for reconciliation in the Budget Act, last year the budget process took 6 months and used 2 months of a conference committee action. Unless this consolidation process of the grant reform legislation provides for a strong discharge procedure and privileged procedural floor consideration, it is quite likely that little actual legislation will be adopted. The draft bill appears to be more effective for expedient committee action of the President's consolidation proposals. I think this is extremely important in any grant reform legislation. The National Conference of State Legislatures entirely supports the executive branch reporting process and the discharge and privileged nature of congressional consideration of the proposals.

The audit titles of each bill provide States with the ability to consider State agency audits so long as they are carried out by independent auditors. The National Conference's current policy supports this cooperation as well as the development of uniform standards and reimbursement for audits of Federal grants. The current practice of taking audit costs from grant overhead costs have complicated implementation and its notion of the lead agency. It is an established fact that many sections of State agencies are entirely maintained by Federal funds for all of their costs. A separate accounting for these audited costs could improve their effectiveness, by simplifying and clarifying the reimbursement process.

The titles relating to joint funding and integrated assistance directly relates to the NCSL's longstanding policy to allow much greater discretion in the use of the Federal program dollars. Presently, Federal agencies have the option to accept a State or local joint proposal. To make the administrators responsible for adopting the proposal, with the burden of proof on the agency to show that the goals of the program would be frustrated, is a rational approach to intergovernmental relations. I praise the authors of both bills.

Another element is to allow agency funds to be pooled and shared on a proportional basis in any joint funding venture. Without such a provision no agency is willing to solely commit itself to an administrative task with its own capital. The proposals relating to crosscutting are again essential to have an effective bill. The National Conference's policy is directed to the end result of having any such standardization be an actual simplification of the requirements. I do not think the States should be presented here as paranoid, or in some way ungrateful. However, standardization has been known to result in the universalizing of the least efficient remedy. Simplification is essential at all costs and, from our viewpoint, certification is the simplest.

In the miscellaneous titles, the single State agency provision and the maintenance in Senator Roth's bill both embody a spirit of cooperation and trust between the levels of government. The Conference has long opposed separate units. Nonetheless, if you visit any State you will see many signs of miniature mirrored Federal bureaucracies which have developed more out of funding and reporting requirements than organizational requirements. The weak communications are a discredit to us all. Protection from unwarranted organizational requirements is a basic first step.

The maintenance of effort language simplifies 50 or 60 different approaches to a most difficult problem. However, with the trend of reduced Federal aid, this issue will become less and less severe.

Let me close by speaking to the State legislative oversight of Federal funds. In Ohio, the legislature's oversight is accomplished by controlling the appropriation of these funds in a special joint body with membership having the controlling votes. This body, the controlling board, has the authority to approve any increase in appropriation authority of Federal funds requested by a State agency over what was appropriated in the budget.

Besides the budget process this is the only time the legislature in Ohio has any control over the Federal funds coming into the State. Even this is limited for the legislators who sit on the controlling board, for they only have the authority to approve or question a recommendation. They do not have the opportunity to develop a plan for which the Federal funds will be used. Oftentimes a deferral of the request is in order to get more information on the program.

The recent GAO study, initiated by Senator Sasser, uncovered a number of abuses by Federal agencies to oversee and appropriate Federal funds. The findings of that study directed OMB to take certain steps to control agency practices. It further directed the Congress to adopt language to protect legislators and their powers. The Conference is pleased that both reform bills address this problem. The language of the bill is stronger in overriding current language. While the language does not mention State legislatures, it does provide clear enough recourse and interpretation to allow States to clean up the contradictory legal history from earlier legislation.

I cannot express too strongly the problems that State legislators have voiced regarding the Federal grant statutes for State legislatures. The belief that one single focal point will make a program more efficient misses the entire point that we are the United States of America and they have their own decisionmaking procedures.

The Conference is committed to lobbying the Congress to enact the recommendations of the GAO study. Senator Roth's bill appears to be a sound presentation of our essential concerns.

Thank you very much, Senator, for the opportunity to testify on this matter before your subcommittee.

Senator **Durenberger**. Thank you very much.

Most of the witnesses here talked about consolidation. I asked a prior witness about the two recommendations—Senator Sasser's bill puts a limitation in there, and Senator Roth's bill is a budget function. Education is a budget function. Under Bill Roth's bill you would get all educational funding into a single block grant. That has raised some concerns on the part of people—like special education. In your capacity there, how do you feel about the general subject of limitation? How much discretion should we give the President? Or, do we have anything to really be concerned about when we talk about consolidation?

Mr. **Sweeney**. Well, first of all, in some areas, the Federal Government calls 100 percent of the rules. It comes up with about 8 percent of the funding in overall education. We want to extend that and cut back. That is the most frustrating part. That is the kinds of actions that mandate two-thirds of the employees being Federal employees to take care of the programs which are initiated in Washington and funded substantially at the State level.

We have had meetings with Secretary Bell. We walked away frightened by what we heard, not only concerning the dismantling of the Department. I do not think many States care one way or the other as long as we have some kind of avenue to approach the educational thought. But in so doing, you are going to pull back funding and leave in place the regulatory aspects of the specific measures that were enacted in Public Law 94-142. The regulations, that came commensurate with that, came out of court decisions that told States they should do that. Many States enacted laws along the same lines to comply with Public Law 94-142.

Now, that money, according to Secretary Bell, is going to be pulled out of the State—in Ohio we spend $450 million on handicapped education. So it is roughly 10 percent; 100 percent of the rules, guidelines and approvals have to come out of Washington.

We then transfer that money in a formula to meet those specifics down to the local school districts.

Now as we understand it, the President is going to pull the $50 million out of a passthrough to the State to bypass the local districts. I do not understand how that is going to function. Nevertheless, it is an additional loss. We will still maintain those employees because we will have all the regulations to answer. That is a frustrating thing there. We have reactions to court decisions concerning the ability and assessability for special interest within the education community to appeal to the courts. It is not going to be curtailed. I disagree with the Governors that that will retard the ability for people to walk into the courts.

If, for example, the money and the regs are pulled, it will not stop, but will probably triple the court case law in Ohio for us. That will become a bill at the State level, and the school districts will get court suits. Those will be frustrating kinds of times.

We have testified a number of times during the hearings on legislation—to grant States flexibility—if it is really the direction. I have to agree that so many of these things come down through the courts, and through congressional action, dictating that States should do something about handicapped education. The right for free public education does not stop because someone has a wheelchair or because it becomes expensive for courts to address it. The courts have mandated us to do some things.

You have 50 States that fund entirely differently from each other. You have 16,000 schools, some of which do not have paved roads going into them. We have a program in Ohio which was a two-tiered education system. The Federal law eliminated that. We had to go with a single State agency and do all kinds of things to comply. That cost a lot of money for us to alter our program for that discipline. It is just double difficulty.

Senator DURENBERGER. I heard you speak to several subjects. Let us discuss the issue of what limitations, if any, there should be on what can be consolidated. Did I hear you say that if the subcommittee had a portability provision—and you had several things that are in here on the crosscutting requirements, and so forth—you would not be concerned about trying to narrow the limitation on consolidation?

Mr. SWEENEY. If we have that flexibility which would tailor in the attitude of States that we have to have the right to emphasize that program in this district which is far more important than the arts program. I think that is very important.

Senator DURENBERGER. What about advanced appropriations? It has been the general view around here in the past that advanced appropriations slow down the progress of this bill. Is it your opinion that advanced appropriations are good? Would you push for that, even if it might delay passage?

Mr. Sweeney. No, if it becomes a serious question, I would not say that would be a priority item. It would help streamline to know what revenues are coming in. We have different fiscal years in the school districts. The Federal Government and States are different, too. It is just a convenient type of model that would be most beneficial, but it certainly is not the major thrust of the bill.

Senator Durenberger. Part of your statement suggests that OMB should be able to enforce funding. I think that is a good idea. Do you have any idea of some specific enforcement powers you might be contemplating?

Mr. Sweeney. No. I do not, Senator. I might in the State of Ohio, but I know the jealousies are probably compounded up here. The interagency fights we have rivals anything I know in government.

Senator Durenberger. My last question relates to your testimony on the crosscutting requirements. Your statement indicates that crosscutting requirements cost us more than they are worth. I keep remembering the way HEW implemented the Rehabilitation Act. Do you have any thoughts on how we can make sure—in assigning guidance agencies to this process—that we will reduce, rather then increase, the cost of crosscutting requirements? Is there something you could suggest to us?

Mr. Sweeney. Quite frankly I would like to work some more with that with the Conference, because we have done some work there, and I am treading on eggshells.

Senator Durenberger. We are all on eggshells on this one. If you could supply us with some suggestions, it would be helpful.

Thank you very much for your testimony.

[The prepared statement of Mr. Sweeney, with an attachment, follows:]

PREPARED STATEMENT OF REPRESENTATIVE PATRICK SWEENEY OF THE OHIO HOUSE OF REPRESENTATIVES

Mr. Chairman and members of the subcommittee, my name is Patrick Sweeney. I serve in the Ohio House of Representatives from a district of Cleveland. I have been a House member for fourteen years with my major committee responsibilities including Finance-Appropriations, for which I chair the Subcommittee on Elementary and Secondary Education, the Ways and Means Committee and the Legislative Budget Committee.

I have been most active with the National Conference of State Legislatures in the area of school finance reform. Last year I presented testimony for NCSL before the House Budget Committee in support of more controlled federal spending, grant consolidations and increased state discretion in grant programs.

This year, the main focus of NCSL's State-Federal Assembly is the States' Agenda for Federalism Reform adopted jointly by NCSL and the National Governors' Association. I have included a copy of the statement in my formal remarks. I know you are all familiar with this agenda.

The point I wish to stress is that federal assistance reform is the centerpiece of this agenda along with a sorting out of responsibilities among the various levels of government. The current maze of over 500 overlapping, single purpose categorical grants is symptomatic of one of the major problems of government: inefficiency. It further reveals a lack of trust and of communication. It is essential that improvements begin in the federal assistance areas as a sign of hope that government can actually improve. The basic grant reforms called for in this federalism agenda include grant consolidation, streamlining crosscutting requirements, and appropriating funds one year in advance of the year in which they are spent.

The second major focus for this year is clearly the President's Economic Recovery Program. It appears that he is using the congressional budget process to enable the Congress to consider, in a short time frame, a wide range of program changes. I have read that he has proposed to consolidate 130 programs into 15 and to eliminate 95 programs entirely. I have noticed that in the consolidation proposals, most major grant programs are being included while hundreds of the less significant grants remain. For this reason it is imperative that grant reform legislation be enacted. Even if the Congress were to adopt every single Administration proposal, the end result would still be a maze of hundreds of grants with crosscutting requirements, reporting forms and so on.

But let me express an even greater fear which many state legislators have been voicing. The Administration is proposing serious reductions in grants-in-aid funds with a promise of flexibility and increased state discretion. These two ingredients have not been high on the Congress' priority list in the recent past. It is still possible that while the 25 to 30 percent reduction in funds for the proposed block grant programs are enacted, all other existing statutory and regulatory requirements may be maintained. States will be in an impossible position in that case, and the provisions of the Federal Assistance Reform Act could provide some room to operate.

It is important in our time of fiscal stress and budget reductions that legislation like S. 45, the Federal Assistance Reform Act of 1981, and the proposed legislation to be introduced by Senator Roth, receive serious consideration since it promotes better management of the categorical grant system by controlling costs and reducing government personnel. As states face federal fund cutbacks, as they face taxing and spending limitations, as they face inflation, the limited federal funds coming into the states become more important. We in the states need to get the most in terms of service and efficiency from these limited federal dollars. Cutting the administrative costs for grant programs is one way to ensure that more dollars go into services rather than into administrative overhead. There is a consensus that the federal assistance system must be streamlined, simplified and made more effective to accomplish these goals. Grant reform legislation addresses these concerns.

CONSOLIDATION

The issue of federal grant reform has been a major priority with state governments. It is our position that one essential step to grant reform is to clarify the disproportionate emphasis placed on narrow categorical grants in federal assistance. Federal grants-in-aid programs have grown to over 500 separately administered programs addressing hundreds of concerns. This growth in narrow categorical programs has long been criticized for its red tape, distortion of recipient priorities and limited success in achieving national goals. Currently over 80 percent of the federal aid which is available to State and local governments is contained in this maze of programs. Even with the sweeping reform proposed in the President's budget, hundreds of categorical grants will still remain. With fiscal stress being felt by all levels of government there is a necessity to streamline, simplify and make the federal assistance grant system more cost effective. Grant consolidations can provide the process to do this by coordinating and unifying program applications, management procedures and audit requirements. Consolidations can improve the grant system by reducing paperwork and overall costs and by reducing the growth of conflicting program requirements.

The consolidation process provided under S. 45 and Senator Roth's bill require the President at the beginning of each session of Congress to prepare and submit to Congress plans for grant consolidations. The proposed consolidations must then be examined by Congress. The requirement that the President submit these consolidation plans is an important ingredient. While the Congress makes every effort in drawing up workable and responsible laws, the Executive branch bears the responsibility for implementing them. To require these submissions in this fashion would facilitate a flow of information to the Congress for oversight which could not be obtained from agency officials individually. Just as important is the required concurrence by Congress of the proposals submitted by the President so that well planned and meaningful consolidations can be achieved without deviating from program goals established by Congress. It is important to stress that the mechanisms and procedures established by Congress to review the President's consolidation proposals ensure that the Congressional committees and subcommittees hear and examine these proposals in a timely and efficient manner. Unless this consolidation process of the grant reform legislation provides for a strong committee discharge procedure and privileged procedural floor consideration, it is quite likely that little actual legislation will ever be adopted. Senator Roth's bill appears to have a more effective mechanism for expeditious committee consideration of the consolidation proposals submitted by the President. I think this is extremely important in any grant reform legislation. NCSL entirely supports the executive branch reporting process and the discharge and privileged nature of congressional consideration of any consolidation proposal. The provisions for an Executive Branch initiated process, with required concurrence by the Congress, offers a balanced approach to the management issues inherent in consolidation as well as the legislative concern over currently enacted statutes.

FINANCIAL MANAGEMENT AND AUDIT

Studies from the late sixties to the present by GAO, Treasury Department and the Joint Financial Management Improvement Programs have consistently reported the need for improving federal grant audits. The diverse and confusing directives from various agencies severely hamper effective and efficient audits.

The audit titles of each of the bills provide states with the ability to consider state agency audits as complying with federal audit requirements so long as they are carried out by independent auditors in accordance with generally accepted audit procedures. NCSL's current policy supports this intergovernmental cooperation as well as the development of uniform standards and reimbursement for audits of federal grants. The current practice of taking audit costs from usual grant overhead costs has complicated implementation of the single audit concept and its notion of the lead agency. It is an established fact that many sections of state agencies are entirely maintained by federal funds for all of their costs. A separate accounting for these audit costs could improve their effectiveness especially by simplifying and clarifying the reimbursement process.

INTEGRATED GRANT DEVELOPMENT AND ADMINISTRATION

Provisions for the joint funding and integration of grants would create an important option of flexibility for state governments. These titles are designed to allow a number of separate categorical programs to be used by state and local government recipients as if they were a single program. Making it possible for state and local governments to fill out one application, deal with one agency and comply with one set of rules will save on administrative costs and reduce government personnel.

It has been NCSL's long standing policy to allow much greater discretion at the state level in the use of federal program dollars. The change from federal agencies having the option to accept a state or local joint proposal to making the administrators responsible to adopt the proposals with the burden of proof on the agency to show that the goals of the program would be frustrated by the proposal is a rational and trusting approach to intergovernmental relations and I praise the authors of both bills for incorporating this viewpoint.

Another essential element is to allow agency administrating funds to be pooled and shared on a proportional basis in an instance of a joint funding venture. Without such a provision, no agency is willing to commit itself to such an administrative task solely with its own administrative capital. It has been the experience of certain states that this excuse has limited the effectiveness of the Joint Funding Simplification Act. It is also crucial that one agency be given some enforcement powers in that area.

ADMINISTRATION OF GENERALLY APPLICABLE FEDERAL ASSISTANCE REQUIREMENTS

There are approximately 60 regulations that cross agency lines. These crosscutting requirements range from procedural instruction, dealing with such subjects as accounting and auditing, to social and economic ones dealing with such subjects as barriers to handicapped, discrimination in employment and environmental safeguards. These crosscutting requirements can be extraordinarily burdensome. In some cases the separate agency regulations promulgated to administer these crosscutting requirements are vague and subject to broad interpretation by the states without any explanation as to their specific applicability to various program requirements. In other circumstances they are very specific, describing in detail how states should carry out the requirements. There is a need to simplify and reduce the inconsistencies that occur in administrating the crosscutting requirements.

The proposals relating to crosscutting requirements would require the President to designate agencies in various policy areas to be responsible for one or more of these crosscutting requirements. These designated agencies would develop standard rules and requirements for the crosscutting statutes.

There is no question that a large share of state paperwork involving federal grants is related to these crosscutting requirements. It is NCSL's policy that the greatest savings in this area would come from the provision which allows for certification by state and/or local governments that its performance is in compliance with state or local laws, regulations, directives and standards that are at least equivalent to those required. I would like to stress a point that simplification in the development of the standard rules by the designated agencies for these crosscutting requirements, not just standardization, is essential.

MISCELLANEOUS TITLE

We support the provisions of this title in both of the bills. We support OMB's development of a system which would provide information on the purpose and amounts of federal assistance awards going to the states and to the provision that directs OMB to study the costs associated with administering the federal assistance system. We strongly support the provisions that provide protection from unexpected policy changes or administrative revisions implemented by federal agencies that affect federal assistance going to the states. However, this provision should make certain that advanced notification of these changes be made allowing state and local recipients a reasonable time to accomplish any revision that may be necessary. We would like to see this provision stronger, allowing state and local government recipients a one-year optional compliance period for revisions made in requirements under which they are already receiving federal assistance, similar to the provision in the original version of S. 878, the grant reform legislation considered last session. The single state agency provision and the maintenance of effort provisions of Senator Roth's bill both embody a spirit of cooperation and trust between levels of government. NCSL has long opposed enforced separate organizational units. Nonetheless, if you visit any state, you'll see many signs of miniature federal bureaucracies which have developed more out of funding and reporting requirements than organizational requirements. The weak communication and the confusing lines of responsibility are a discredit to us all, and protection from unwarranted organizational requirements is a basic first step.

The maintenance of effort language simplifies what must be 50 or 60 different approaches to a most difficult problem. However, with the trend of reduced federal aid exemplified by the President's budget, this issue will become less and less severe unless state responsibilities aren't reduced commensurate with funding reductions.

Let me close by speaking to the "State Oversight of Federal Funds" section or the "State Legislative Oversight of Federal Funds" section included in both bills. In Ohio, the legislature's oversight of federal funds is accomplished by controlling the appropriation of these funds through the budget process and a special joint legislative/executive body with legislative membership having the controlling votes. This joint legislative-executive body, the Controlling Board, has the authority to approve any increase in appropriation authority of federal funds requested by a state agency over what was appropriated in the budget. Besides the budget process this is the only time the legislature in Ohio has any control over the federal funds coming into the state. Even this control is limited for the legislators who sit on the Controlling Board only have the authority to approve or reject the request for increased appropriation authority. They do not have the opportunity to develop the plan for which the federal funds will be used. Often times a deferral of the request in order to get more information on this program plan results in the loss of the Federal funds. A recent GAO study, initiated by Senator Sasser, uncovered a number of abuses by federal agencies of the rights of state legislatures to oversee and appropriate federal grant funds. The findings of the study directed OMB to take certain steps to control federal agency practices, and further directed the Congress to adopt language which would protect state legislatures and their powers from intrusion by federal grant legislation. NCSL is pleased that both grant reform bills address this problem. The language of Senator Roth's bill is stronger in overriding current contrary statutory language. While the language does not mention state legislatures, it does provide recourse and an interpretation clear enough to allow states a chance to clear up the inconsistent and contradicting legal history which stems from earlier enacted grant authorizing legislation. I cannot express too strongly the collective concerns which many state legislators have voiced regarding the intrusion of federal grant statutes and program practices into the constitutional authorities of state legislatures. The belief that one single focal point or individual in a state will make a program more effective or efficient misses the entire point that the states each have their own decision-making procedures and practices.

NCSL is committed to lobbying the Congress to enact the recommendations of the GAO study, and the Roth bill language appears to be a sound presentation of the essential concerns.

CONCLUSION

Thank you for this opportunity to testify. As I pointed out in my testimony, grant reform is a major priority of state governments. Because of the fiscal stress faced at all levels of governments, grant reform is no longer just a good idea but a necessity. We must operate our federal assistance system in the most efficient and cost-effective manner possible so that the limited resources available to us can be put to its best use. This grant reform legislation that would consolidate programs, streamline the Federal Assistance system and reduce the burden of Government regulations and mandates can take the lead to accomplish this goal.

STATEMENT ON FEDERALISM REFORM ADOPTED BY THE EXECUTIVE COMMITTEE OF THE NATIONAL GOVERNORS' ASSOCIATION AND THE STEERING COMMITTEE OF THE STATE-FEDERAL ASSEMBLY OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

The Constitution of the United States created a federal system of government in which power is distributed between the national government and the several states.

The federal system has become overloaded in recent years, as demonstrated by the proliferation of more than 500 categorical grant programs which either bypass the states or treat them as administrative arms of the national government, and by the widespread conviction that federal programs are unmanageable, ineffective, costly, confusing, and unaccountable to the public.

Three factors make the need to restore balance to the federal system most urgent. First is the growing consensus among elected officials and the public that the current system is characterized by program overlap, intergovernmental conflict, and waste and that it ultimately produces results that fail short of the goals and needs it was designed to serve. Second is the overall need to limit the cost and growth of government at all levels, making the current system unworkable as an instrument of national policy. Third are the increased efforts and capacity of state governments to provide services and the growing concern that overlap between similar state and federal programs wastes funds entrusted to elected officials at all levels of government.

Accordingly, the states—represented by the members of the National Governors' Association and the National Conference of State Legislatures—pledge to work for reform of the federal system through:

1. Immediate action by Congress and the Administration on the following items:

(a) Enactment of the Federal Assistance Reform Act, which establishes systematic procedures for congressional consideration of grant consolidations, streamlining crosscutting requirements, and appropriating funds one year in advance of the year in which they will be spent.

(b) Enactment of fiscal note legislation requiring that the Congressional Budget Office assess the cost to state and local governments of legislation pending before Congress as a first step to controlling federal mandates on state and local governments. If a situation is of such compelling national concern as to prompt enactment of a federal program to respond to it, the federal government should normally fund that program. Action should also be taken to assure that the fiscal effect of federal regulations on state and local governments are assessed before final promulgation.

(c) Continuation of the state share of revenue sharing, an important element of the intergovernmental system.

2. Sorting out roles and responsibilities among the three levels of government by, for example, encouraging the convening of state and national convocations to address how to provide more accountable public programs, more effective program design, and more efficient administration of public funds. The division of labor should recognize the primary federal policy and financial responsibility for national defense, income security, and a sound economy, and the primacy of state and local governments in such areas as education, law enforcement, and transportation. The sorting out process must clarify the responsibilities of each level of government and the tax sources required to meet those responsibilities.

3. Consolidation of related federal categorical programs into block grants which provide flexibility for governments to target funds where they will do the most good.

4. Action by the Administration and Congress to ensure that federal legislation and regulations do not pre-empt state laws and policies.

5. Development of a new relationship between states and the federal government that focuses on achieving end-results in programs of national concern rather than prescribing explicit administrative requirements.

6. Careful review by states of court decisions affecting the federal system and development of an appropriate legal response.

7. Action by Congress to provide needed clarification of the Constitutional amendment procedure by state petition contained in Article V.

Senator DURENBERGER. Next we will have a panel—or three successive witnesses. The first is Mr. Robert Wallick, an attorney with Steptoe & Johnson, and president of the National Assistance Management Association. He will be testifying on behalf of the National Assistance Management Association. You may introduce the rest of your panel, Mr. Wallick. We are pleased to have you here today.

TESTIMONY OF ROBERT D. WALLICK, ATTORNEY, STEPTOE & JOHNSON, WASHINGTON, D.C., REPRESENTING THE NATIONAL ASSISTANCE MANAGEMENT ASSOCIATION

Mr. **Wallick**. Thank you.

I am joined today by Mr. Matthew Lasker who is the vice president of the National Assistance Management Association and is with the U.S. Department of Health and Human Services. I am also joined by Dr. Robert Newton, who is the immediate past president of our association and is with the National Science Foundation.

The three of us appear today on behalf of NAMA. We are a membership organization with well over 500 members. We represent no one. We are a group of persons joined together in the interest of improving the management of assistance programs generally and without a special interest, or an ax to grind, in any one particular area or group of programs. We welcome this opportunity to appear here today before you, Senator.

Senator **Durenberger**. How do you survive without representing something?

Mr. **Wallick**. Well, virtue is its own reward.

First off, on the Senate bill 45, and Senator Roth's new bill, we will not be testifying extensively on the particular provisions of those bills. We support the initiatives that were in S. 45 and S. 878, its predecessor. Already within the Federal establishment they have done considerable good. They and other initiatives have furthered the goals sought. At this time, in OMB and the agencies we see substantial movement to improve the management of the crosscutting conditions and to consolidate grants.

What we have seen of the new bill, to be introduced by Senator Roth and the other sponsors, is encouraging. We think they are going in the right direction. Important and needed legislation is being improved. But since we have not had a chance to examine the new bill, or study it, we would like today to direct our attention to areas of management reform which we think are for development and which we want to bring to the attention of this subcommittee and the Congress. We hope that, if not in this legislation, at least in the continuing deliberations of this subcommittee, there can be some improvements in these areas.

In our written statement we have listed seven specific areas that we are interested in. I would like to focus on each of those, Senator.

First, we believe there should be established, within the OMB at the associate directors' level, an organization with principle responsibility for formulating Federal policies. We have had the opportunity to observe the role of the Office of Federal Procurement Policy, OFPP, and that analog exists in the procurement field. That field would benefit from a high level organization within the Office of Management and Budget. Its beginnings already exist within the management and assistance policy branches of OMB. Such an office of Federal systems policies should have strong staff ties to the paperwork and regulatory effort that is ongoing at OMB at the present time. It should assume the responsibility which exists presently in the Office of Procurement under the assistance programs. We believe that many in the procurement field accept that same concept. It was unfortunate that responsibility for procurement under the assistance programs was merged into the OFPP where the problems and considerations are so different.

In your deliberations, this subcommittee might pursue either of two approaches. One would be merely to evidence some interest in an organization at OMB with policy level responsibility—perhaps by putting a statement of interest in a report, and then encouraging OMB to reorganize. A second possibility would be to consider legislation to create an office along the analog of the Office of Federal Procurement Policy. For these purposes, when we speak of assistance, we are speaking of the entire universe of assistance. All should fall within the policy jurisdiction of such a central office. We include grants, cooperative agreements, direct payments, loans, loan guarantees, subsidies and insurance. We are not suggesting that tax subsidies be included.

We believe a central office which had overview and policymaking responsibilities, and did not have the present split personality at OMB, would be quite an improvement.

The second major area—and the two go hand in hand—is what is known to us as "alternative means." Some assistance is given as grants, some as loans, some as subsidies. These are alternative means for delivering assistance. Public Law 95-224 focuses on two of those, grants and cooperative agreements, and distinguishes the two.

The time is ripe for OMB to start defining the alternative means available. OMB, in a recent study, supported the need for this development but we are concerned that nothing is ongoing in this regard at this time.

Let us be specific. We suggest that, consistent with the President's policy and the desires of this Congress, ways should be sought to reduce the Federal Government's encroachment on the responsibilities of grantees. There is a need to have a clear understanding of how a program should be run and what are the rights and responsibility of those involved.

A beginning point would be to define a grant which is to have minimum strings—a grant consistent with Federal programs and policies but with a minimum amount of Federal reporting, approvals and other forms of intrusion. This definition then should be circulated among the Federal agencies with a request that they indicate why it would not be practical for them to cast their transactions in the form of that minimum involvement grant.

From this beginning process we then could develop a series of definitions each defining a differing but specific relationship. This would do much to improve management. Indeed we believe this is a necessary first step to understanding processes and to putting into being the many structural reforms that are needed.

We would point out that as a byproduct to the process of defining relationships, we would learn much about what can be left with the States and grantees. Many in NAMA believe that the funding of some projects jointly can be accomplished without legislation. History shows that the present statute has created a process that tends to remain theoretical. However if the responsibility for assembling programs into a package were placed at the grantee or assistee level, and was not left at the Federal level, we believe you would see a dramatic turn around.

Developing and understanding where responsibility should be placed, and the improvements this could lead to, would be enhanced by defining and developing a matrix of alternative means.

We are pleased that in the new legislation attention has been given to the need for clarity. Assistance is a complex area. Words should be used with care and precision. Other laws have made some beginnings in this regard. We would be pleased to work with your staff to better assure definitional precision. This is important to us.

OMB could and should initiate approaches to encourage Government-wide perspectives by program managers in the operation of assistance programs. Each is accountable for his or her own program. This creates a parochialism, and therefore all too often broad management changes are difficult to enact. Various possibilities exist to encourage program managers to have a broader vision. One would be to develop program standards which encourage pursuit of general policies similar to what is done for public policy concerns.

Assistance programs would benefit from improved input into major policy developments by interested citizens and groups prior to drafting, prior to policy being cast in the hardened form of a proposal. This is inhibited by the Advisory Committee Act. That act addresses a very real concern of the Congress, avoiding undue influence. But that concern should be balanced against the need to allow regulations and the Federal agencies to benefit from the perspectives of others in a timely manner. We have noted in our paper particular ways that the latter might be furthered, and I direct your attention to our statement. One would be to have citizen committees at the agency level suggest policy initiatives.

Another would be to call meetings which allow interested parties a chance to present views in major policy decisions before regulations are drafted.

There is a further question as to whether this subcommittee should be encouraging OMB to provide regulatory guidance in additional areas. We discussed this in our presentation. We do not have an association position in this regard, but we are concerned. We note that circulars now come out from OMB, which, in order to be of legal force, must be implemented in 69 sets of agency regulations.

The Congress itself could benefit if a clearance procedure were established on legislation in order to be certain that management improvements made now aren't lost sight of in future legislation.

Those are our recommendations, Senator. They are explained in more depth in our paper. We appreciate this opportunity for appearing here today.

Senator **Durenberger**. Thank you. I personally appreciate the thoroughness of the paper.

This hearing was billed to you as a 3-hour hearing. Because of the efforts of the dairy lobby and the President to bring on a vote at 4 o'clock, we are starting to run out of time. I appreciate your time. Thank you all.

[The prepared statement of Mr. Wallick follows:]

NATIONAL
ASSISTANCE
MANAGEMENT
ASSOCIATION

P.O. Box 57051, Washington, D.C. 20037 • (202) 223-1448

PREPARED STATEMENT OF

ROBERT D. WALLICK

March 25, 1981

President
Robert D. Wallick
Steptoe & Johnson

Vice President
Matthias Lasker
U.S. Department of Health
& Human Services

Secretary
William B. Montalto
American Bar Association

Treasurer
Ann Steinberg
Boasberg, Klores, Feldesman & Tucker

Immediate Past President
Robert D. Newton
National Science Foundation

BOARD OF DIRECTORS

Jonathan D. Breul
U.S. Department of Health
& Human Services

Robert F. Carmody
The American University

James D. Carroll
The Brookings Institution

Linda A. Church
National Association of Counties (NACo)

Robert E. Coakley
U.S. Senate Staff

Betty N. Davis
U.S. Environmental Protection Agency

Nell Edin
U.S. Agency for International Development

Theodore Goldberg
U.S. Department of Labor

Alexander J. Greene
Government of Montgomery County, Md

Richard R. Hite
U.S. Office of Management & Budget

Link Hoewing
U.S. Senate Staff

Delores B. Lanneau
U.S. Department of Health
& Human Services

Robert M. Lloyd
Grants Management Advisory Service

Thomas J. Madden
Kaye, Scholer, Fierman, Hays & Handler

Charles H. McLaughlin
U.S. Department of Transportation

Eugene T. Peterson
National Retired Teachers Association
American Association of Retired Persons

E.T. Rhodes
U.S. Office of Personnel Management

Theodore J. Roumel
U.S. Public Health Service

Bill W. Thurman
U.S. General Accounting Office

Robert L. Van Ness
U.S. Department of Energy

ASSISTANCE REFORM: POTENTIALS FOR IMPROVING THE MANAGEMENT OF PROGRAMS [1]

We appear today on behalf of the National Assistance Management Association ("NAMA"), a membership organization composed of more than 500 key individuals involved in the management of Federal assistance programs. NAMA's membership includes persons from virtually every segment of the assistance community: the Federal government, State and local governments, colleges, universities, hospitals, other non-profit organizations, and industry. The major interest of our Association is the improvement of the management of Federal assistance.

Our Association fully supports the efforts by the Congress and the Administration to improve and simplify the delivery of assistance. We commend this Committee for its attention to such a long needed, but often unglamorous, area for reform.

---

[1] Statement by Robert D. Wallick, President of the National Assistance Management Association, on March 25, 1981, before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Affairs.

Senate Bill S.45, and its predecessor, S. 878 in the last session of the Congress, have already proved their merit. The concepts embodied in their principal titles -- consolidating grants, making joint funding work, streamlining cross-cutting conditions and single audits -- have become important initiatives within OMB and among the Executive Agencies.

We look forward to the further legislation which is being considered by Senator Roth, the "Federal Assistance Reform Act of 1981". Drafts which have been prepared by the Staff of the Committee are constructive and thoughtful. Initiatives in new areas, such as sunset review, are deserving of consideration by this Committee.

Today, on behalf of NAMA, we would like to address the proposed legislation, and assistance reform generally, from the perspective of improving the management of this vast and complex effort. Recently, Mr. Elmer Staats, upon his retirement as Comptroller General, suggested,

> "Perhaps the professional societies have not been active enough in calling the attention of the Administration to the need to have a more vigorous program in the field of management."

We agree.

Our Association suggests that enormous potentials for improvement exist in the management of assistance programs.

In our view, such improvements should be and are a primary responsibility of OMB and Executive Agencies. The role of thoms Committee and the Congress, we believe, is to stimulate and encourage such management improvements and, where necessary, to provide a statutory base. To these ends, we recommend that this Committee, the Congress and the Administration give consideration to the following:

1. There should be established within OMB, at the Associate Director level, an organization with the principal responsibility for formulating Federal assistance policy. We have had an opportunity to observe the role of the Office of Federal Procurement Policy (OFPP), an analog to our proposal in the procurement field. The assistance field would benefit from an equivalent high level organization within OMB. Its nucleus already exists within OMB's financial management and assistance policy branches.

Such an Office of Federal Assistance Policy should have strong staff ties to the paperwork and regulatory reform efforts. It should assume responsibility, presently in OFPP, for policy on procurements under assistance programs.

In its deliberations, this Committee might wish to consider two possible approaches for the establishment of such an Office of Federal Assistance Policy (OFPP). One would be to provide a statement of the sense of the Committee that OMB establish such an organization. A second possibility would be legislation establishing an OFAP in a manner similar to the Office of Federal Procurement Policy.

2. In the assistance reform initiatives by the Congress and the Administration, definitional precision is extremely important. Public Law 95-224, the Grant and Cooperative Agreement Act of 1978, was a significant first step in that direction. Unfortunately, in S.45, the terms "assistance" and "recipient" are used in several different ways. We would hope this could be avoided.

We further note that in our opinion, the universe of "assistance" to be included within the jurisdiction of an Office of Federal Assistance Policy should run the full gambit of federal outlays for financial assistance: grants, cooperative agreements, direct payments, loans, loan guaranties, subsidies and insurance. Consideration might also be given to including policy jurisdiction over revenue sharing.

Under the definition of "contract" in Public Law 95-224, transactions entitled "contracts" are to be used to evidence procurement transactions and, therefore, fall within the jurisdiction of the Office of Federal Procurement Policy.

This, in our view, is a sound definitional and functional distinction.

3. OMB should be encouraged to develop a matrix -- a definitional framework -- for the alternative methods available for delivering assistance. This is an extremely important point and is addressed more fully later in this presentation.

4. OMB should be directed to study the use of approaches which would encourage government-wide perspectives by program managers in the operation of the assistance system. Parochialism is a problem. Indeed, the existing system has built-in disincentives to good management and toward fragmentation. One possibility would be to develop personnel performance standards for program managers which encourage government-wide perspectives, similar to the existing criteria placed in performance evaluations for merit pay bonuses, covering equal employment opportunity and other public policy concerns.

5. Assistance programs would benefit from improved opportunities for timely and meaningful input into policy and regulation developments by interested citizens and groups. This, we believe, would not be possible unless and until the Advisory Committee Act is addressed and perhaps reconsidered. The Act, as it is applied today, effectively prevents meaningful input by citizens in the development of policy and regulations. Participation normally is limited to comments upon proposed

statements or regulations after initial agency positions have been hardened. This is an unfortunate result.

We suggest the Act should be amended so as to encourage procedures and structures which furnish OMB and the Federal agencies the benefit of public participation in policy and regulatory initiatives which are of financial or social significance before assistance decisions are cast into formal proposals. We note, for example, the former HEW Grant Administration Advisory Committee (GAAC). The Committee suggested useful structural and policy changes which were later adopted, such as consolidation of grant payments to recipients, establishment of the Grant Appeals Board and setting up a control payment pool for indirect costs. That useful group was disbanded because of the pressure to reduce the number of advisory committees as mandated by the Advisory Committee Act.

A second example is a procedure used in the past at the Law Enforcement Assistance Agency, which set up a conference on important initiatives in advance of agency drafting. To this conference were invited the public at large and, by specific invitation, persons known to be interested. We understand that a concern about the Advisory Committee Act restrains broader use of such a technique.

6. OMB should have authority to issue its policy directives as regulations, to the extent deemed appropriate by OMB. At the present time, OMB circulars such as A-110 are of an un-

certain legal status. In order to assure their enforcement, they are repeated in agency regulations.

7. The Congress, consistent with the goal of clear and uniform management systems and policies, should establish a clearance arrangement to guide assistance policy into new legislative enactments. This could assure, for example, continuing recognition of the ultimate methods of delivery. The problem is that if a management structure is created to differentiate between various types of transactions, new legislative enactments might simply override the improved structure, unless Congress is continually attentive to this possibility.

As this Committee is no doubt already aware, two threshold difficulties impede reform efforts in the assistance programs at the present time. First, there is a severe paucity of knowledge of what is actually happening in the thousands of daily transactions. How are programs being administered in fact? How much federal intrusion is needed in particular relationships? What methods are cost effective? The transactional level of assistance must be brought into sharper focus if we are to improve delivery. And we believe that this is the level where potentials for reforms are the greatest.[2/]

[2/] The lack of a sharp focus on what is occurring at the transactional level brings to mind a famous rule:

> The mathematician Georg Cantor spoke of a law of conservation of ignorance. A false conclusion once arrived at and widely accepted is not easily dislodged and the less it is understood the more tenaciously it is held.

Morris Kline, Mathematics, The Loss of Certainty, (1980), p. 88.

On the other hand, a sound management master plan should be developed before imposing rigid substructures piecemeal. We need clear definitions of the alternative methods of delivering assistance which are to be used as a first priority. We should not fashion the skeletons until we know what we want the animals to look like. For example,

1. OMB has drafted a Circular covering review and appeal processes for resolving disputes which arise under assistance programs. We favor the initiative, but believe it to be premature. Without definitions of the alternative methods, OMB is left with a Hobson's choice of issuing either a general, platitudinous statement of policy or of providing specific forms which won't fit many of the animals on the Ark.

2. OMB and this Committee are considering the problem of managing the crosscutting conditions imposed on assistance. Again, in our view, this is premature, until after a matrix of alternative means have been developed. Relatively speaking, the issues of crosscutting requirements are peripheral (albeit important) problems in the field of assistance management. The requirements are "additional baggage", the management of which can't be addressed until the grant and other relationships are defined. It is possible that monitoring in the public policy area should be heavier under a cooperative agreement, that the establishment of performance standards would be appropriate

under grants and that simple certification would be sufficient under lump sum awards. Further, the definition of alternative methods of delivery would facilitate differentiations where specific public policy requirements have their greatest impact on certain functional areas such as construction or research.

We suggest that this Committee should proceed very slowly in legislating details of program management at this time. A better first step would be for this Committee to assume that OMB has a structure and a mandate to manage the system. We note that there are policies in place such as those in A-102 and A-110 and the cost principles, which give significant recognition to legitimate system-wide considerations to and to differences in grantee organizations. OMB should have a structure and authority to make those and additional policies binding on the Federal agencies, that is, an Office of Federal Assistance Policy plus regulatory authority in the assistance area.

In his inaugural address, President Reagan stated

> "It is my intention . . . to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the states or to the people."

We support that goal and suggest that it would be enhanced if a matrix of defined alternative methods of delivering assistance were developed. Allocation and assignment of responsibility for broad powers or functions will not be easily accomplished. For example, education may be primarily, but will never be exclusively, a State or local function. Moreover, federal and non-federal roles change as circumstances change. Therefore, we need structural means of systematically and continuously assigning and reassigning roles and responsibilities at functional and subfunctional levels.

Unsystematic federal intervention and regulation and unsystematic federal program implementation are related. Federal intervention, as exemplified in the unsystematic use of regulations and requirements, is by and large a consequence of the unsystematic implementation of programs. Federal funds have been followed by federal strings.

Much can be done. We can distinguish alternative types of federal/non-federal relations at the project of activity level. Using grant, cooperative agreement, subsidy and other relationships, defined in terms of involvement, as building blocks, roles and responsibilities can be laid out not only at the project or activity level, but also at the program or policy levels and, if necessary, at the level of powers or functions. This process does not provide answers to questions of how to assign powers, functions or roles and responsibilities. It does provide a structure to permit systematic assignment of roles and responsibilities at all of these levels, depending on the circumstances and needs of the time and place. Judicious use of alternatives will enable the operation of federal programs to be made responsive to policy-level political decisions. The degree of federal involvement intended can be specified by using alternatives defined in terms of involvement.

Keystone to the development of such a structure or framework would be defining the federal grant relationship. As the major assistance relationship, it symbolizes federal assistance. Grants now are used for relationships ranging from those in which a federal agency simply provides funds for a specified purpose to those in which there is substantial federal involvement in and control of the project or activity being performed. The "grant" has no precise meaning.

If federal intervention is to be controlled, the grant relationship must be defined, not on the basis of present use, but on the basis of how it should be used. Reform must be prescriptive, not descriptive.

PL 95-224, the Federal Grant and Cooperative Agreement Act of 1977, requires that the grant be defined as entailing little or no federal involvement during performance of the work supported. The grant has yet to be so defined by the Executive Branch. It can be.

How should it be defined? The problem in grant relationships is two-fold. First, procurement-type controls have been applied to grants to assure the accountability for federal funds that is important from a federal perspective. These federal controls are illustrated by requirements for prior approvals of travel, the purchase of equipment or the use of significant contracting. Most of these requirements and the accompanying paperwork are unnecessary. They preempt local responsibilities, while making work for federal bureaucrats. Given the great number of grants in existence, even a few prior approvals per grant represent enormous amounts of expended time and effort.

The second problem with the grant relationship is that the project or categorical grant usually supports only one part of a grantee's activity. The funds provided generally must be spent in specific ways for that particular activity regardless of its relationship to other grantee activities. This artificial fragmentation of support often requires unrealistic and unproductive expenditures of funds and use of resources by the grantee. It is wasteful and debilitating.

The problems of federal controls and project fragmentation can be dealt with by defining the grant as requiring that the grantee be given the responsibility and the necessary authority to perform the supported work. All federal prior approvals except changes in scope can be delegated to the grantee. Additional authority, such as to change stop and start dates, can be provided. And project or activity fragmentation can be dealt with by providing the grantee with ad hoc, transaction-level authority to make specific decisions to relate or aggregate projects or parts of projects and thereby use funds and allocate resources in ways that make good management sense. If changes such as these are made, the "grant" will reflect a relationship characterized by federal delegation and devolution of authority, resulting in unambiguous grantee responsibility, including the responsibility to consolidate in appropriate circumstances.

If the federal intervention that has come to dominate federal/non-federal relationships is to be controlled, the grant relationship must be defined to mean "no federal intervention". The grant is the keystone of an assistance system which can be used to specify roles and responsibilities in accomplishing national objectives. An assistance system can provide a choice between the grant alternative and other assistance or procurement alternatives to accomplish program, policy or political objectives. This structure can be responsive to political, policy or program controls, and the resulting network of relationships will be there for all to see. If one combination doesn't work for a given purpose, it can be changed.

What is required to put this type of a system in place? Defining the grant is the crucial first step. Taking that step will provide a balance heretofore lacking in a system tilted toward federal involvement or control. Based on the authority and requirements of PL 95-224, the Executive can define the grant and require it to be used by the federal agencies. Only specific statutorily-established requirements would be exempt.

A second step, which would be given impetus by defining the grant relationship, would be to define the balance of the spectrum of assistance alternatives: cooperative agreements, loans, loan guarantees, subsidies, direct payments and the like, and the conditions for their use, including the standard and optional clauses to be used in them.

A third step would be the preparation of an OMB Circular delineating the processes to be used by federal agencies in the selection, justification and use of the spectrum of assistance alternatives.

A fourth step would be to amend PL 95-224 to provide federal agencies with statutory authority to use assistance alternatives other than grants and cooperative agreements.

A fifth step would be consideration of how various systems of alternatives, such as assistance, procurement, tax and regulatory systems should be related as alternative program implementing systems.

A sixth step would be to establish in OMB an Office of Federal Assistance Policy to rpovide the leadership to accomplish the needed reforms.

Senator **Durenberger**. Our next witness will be Mr. Delon Hampton, testifying for the American Consulting Engineers Council. This council has been very helpful to the subcommittee in the past. We are pleased to have Mr. Hampton with us today.

You may make a brief statement. I apologize to you, as I did to the last witnesses, for telescoping the time.

You may proceed with your statement.

TESTIMONY OF DELON HAMPTON, PRESIDENT, DELON HAMPTON & ASSOCIATES, ON BEHALF OF THE AMERICAN CONSULTING ENGINEERS COUNCIL, ACCOMPANIED BY LAURENCE BORY, ACEC STAFF

Mr. **Hampton**. Thank you very much, Mr. Chairman. We appreciate the opportunity of being here today. With me is Mr. Laurence Bory of the ACEC staff.

More than half of ACEC's members provide design services to local governments, often under contracts pursuant to a Federal grant.

Consulting engineers, working on behalf of their client local governments, are continually frustrated by the inefficiencies of grant programs. Streamlining the Federal grant assistance system will better fulfill the congressional intent of these programs, enable engineers to spend more time on engineering, and save taxpayers' money at all levels.

S. 45—like its predecessor in the 96th Congress, S. 878—includes provisions to standardize regulations, consolidate categorical assistance programs, require single audits, and extend certain administrative rights to municipal recipients of Federal grants. Our members endorse these reforms and urge the subcommittee to consider amendments which will strengthen the audit procedures and title V, "Regulatory Flexibility."

The consolidation of many categorical programs to improve efficiency in the Federal system makes a great deal of sense. However, once Congress approves consolidation of the programs, new regulations should be simple and clear. Consolidation plans for grant assistance should (1) simplify requirements; (2) reduce Federal reviews and paperwork; and (3) reduce the number of Federal and State hands reviewing, evaluating, approving, and auditing the project.

As an example, let me cite the grant programs of the Economic Development Administration, the Farmers Home Administration, the Department of Housing and Urban Development community development and the Environmental Protection Agency wastewater treatment construction grants.

Each of these programs has a common objective: providing funds to local governments to upgrade basic infrastructure for water and sewer systems. Joint funding or multiple grant coordination of a project, such as the planning and building of an industrial park and providing a water treatment and sewage treatment system to service it and the surrounding residential community, should be possible, assuming that eligibility criteria for each program are all met.

The reality is that consolidation of even two grants at the local level is a nightmare of multiple reviews, inconsistent administrative structure, and contradictory documentation requirements.

We endorse the objectives of the financial management and audit title that would "provide for a single, independent financial and compliance audit of State and local governments at least once every 2 years." This section should be amended to provide for a passthrough provision to those providing professional services to grantees, such as consulting engineers.

In response to a recent request from the staff of the Senate Committee on Governmental Affairs regarding the most burdensome paperwork requirements, consulting engineers overwhelmingly identified audits, mostly related to grant-funded projects, as the most burdensome. We know that these complaints of our members reflect the same problems experienced by their client local governments.

Local governments and professional services providers, such as consulting engineers, are literally besieged with Federal auditors. Despite the issuance of the Office of Management and Budget's Circular A-102, attachment P—which requires Federal agencies to designate a single audit agency, multiple audits are still a major problem. This is particularly true on negotiated overhead rates.

Agency auditors are invariably late on establishing overhead rates. Despite inflation, current rates cannot be used until certified. In our case, we completed a project in 1976 and as of yet we have not been reimbursed for the difference in the overhead rate on that particular project.

Multiple audits have become so commonplace to engineering firms that many have set aside special rooms for the auditors and have designated a full-time staff to do nothing but work with the Federal auditors. In our case, we had two different agencies auditing us simultaneously. One week after they departed, other auditors came in to review the same information.

An agency audit team will often work over the books to determine an overhead rate reviewed by a different agency team the week before. Many firms have told us that there is always at least one audit team in the office reviewing a contract under a grant or an overhead rate. However, because the agencies do not have consistent audit criteria, the resultant overhead rates are often widely divergent. In our case, one auditor came up with an allowable overhead rate of 117 percent and another, looking at the same data, came up with 91 percent. We are contesting the latter, naturally, because if we accepted the 91-percent rate we would be paying to work for the Federal Government.

The firms' client local governments often experience the same parade of auditors reviewing the same books.

Let me cite the record of most grant programs for public facilities construction as an example of the impact of these two common practices. Delays in decisionmaking on public facilities grants, and changing regulations during such projects, have lengthened completion times to between 5 and 10 years. Comparable private-sector or nonfederally funded local projects are completed in half that time, or less.

Much of the delay is due to indecisiveness by Federal project review officers. Many Federal grant programs have become circumscribed, not only by their own regulatory processes, but also by so-called social requirements that have very little to do with agency or project objectives.

In some cases, these requirements have been included in agency legislation, such as the Davis-Bacon area labor wage rate determinations. In other cases, they have been incorporated by reference into regulations. This is particularly true of environmental impact assessments, archaeological and historical evaluations, endangered species reviews, and many others.

The practice of unnecessary impact studies, changed requirements and delayed decisions is not limited to EPA. Highway standards revisions have caused many projects, nearly complete in design and ready for construction bid, to go back to the drawing board.

The Federal Emergency Management Administration literally reversed itself on the objectives of its flood insurance program last year and told local governments and their engineers that not only was FEMA changing the rules, but costs already incurred by local governments were no longer grant eligible.

We believe that S. 45 needs to be made stronger in title V to assure that wasteful delays in decisionmaking and changes in regulations are not perpetuated as a routine way of doing business by grant agencies. We therefore urge the subcommittee to include our recommended amendments.

We thank you for this opportunity to testify, and we will be pleased to answer any questions.

Senator **Durenberger**. I want to thank you for testifying. Your written statement is more complete than your oral statement. I am grateful for that. As I traipsed around the small towns of Minnesota, I heard this problem articulated, not only by the mayors and the city councils, but also by the consulting engineers involved. You have so well expressed the result in that paper—not on your own behalf; but like the tax person suggesting simplification on tax matters—on behalf of public servants, taxpayers, and everyone else.

You have heard me earlier today talk about limitation and consolidation. You mentioned on the second page of your statement four programs. Under either of these bills which we are discussing, there is either a functional limitation or a beneficiary's limitation. The President could not consolidate these.

Did I hear you correctly? Are you saying he should be able to consolidate? It would make sense. Would you recommend that we give consideration to a broader consolidation?

Mr. **Hampton**. Yes, sir.

Senator **Durenberger**. On page 3 you are talking about EPA, and later the Farmers Home Administration. An estimated 3,000 to 4,000 projects could not agree on the cost principles involved.

Mr. **Hamption**. Yes, sir.

Senator **Durenberger**. So that the management could be simplified?

Mr. **Hampton**. Yes, sir.

Senator DURENBERGER. Could either of you expand a little on what was involved there?

Mr. BORY. In this case, Senator, the regulations of these two programs are very different. The Farmers Home Administration does not reimburse localities for any of the engineering services. That is limited to the construction costs. While EPA's eligibility rules include the engineering services, the problem has been with the documentation, the kind of contracts used for the engineering services. Generally EPA has no specific requirements as to the kind of contract. Despite the fact that Farmers Home does not reimburse the localities for any of the engineering services, they have dictated the type of contract that must be used. This particular kind of contract opens engineers to much broader liability and therefore is not favored by engineering firms. We have literally been in negotiation with the two agencies for 4 years now to get them to try to reach a common form basically. That is what we are arguing about, the same kind of form, so that we could essentially provide these services to most of the rural communities without the kind of excessive paperwork and negotiation that goes into nonproductive-type work.

It does not involve water pollution, just paper process.

Senator DURENBERGER. On that same page, you talk about the passthrough to grantees. What is the passthrough you are mentioning?

Mr. BORY. What we would like to do here—we have not had a chance to look at Senator Roth's new bill—but we would like the bill to allow professional service contracts to be covered by the same single audit provision, so that, for example, if a firm is doing grant-related work—say under the highway program—as well as EPA, that overhead rate will be accepted by other agencies.

By the way, aside from Federal resources, most of these audit contracts are contracted out, too. They hire audit firms to come in and audit their firms. The succession of auditors who come in is literally like a parade, as we say in the testimony. Designating a specific room is necessary to accommodate these folks. The space cost for that audit room is considered nonproductive space and not allowed overhead rate.

Senator DURENBERGER. I want to thank you. In conclusion, I want to tell you that Bill Roth and I had a session yesterday. One of the subjects we talked about was the paralysis that grips decisionmaking. I particularly appreciated both your comments on that issue on page 6 of your testimony and your illustration of it. It is a concern that everyone on the subcommittee shares. We certainly plan on doing something about it during the course of this work.

Thank you very much for your testimony.

[The prepared statement of Mr. Hampton follows:]

PREPARED STATEMENT OF DELON HAMPTON

Mr. Chairman, my name is Dr. Delon Hampton. I am President of Delon Hampton & Associates, Chartered, of Rockville, Maryland. I am pleased to be here on behalf of the American Consulting Engineers Council (ACEC), a federation of 3,700 mostly small business private-practice engineering firms representing a multitude of design disciplines. More than half of ACEC's members provide design services to local governments, often under contracts pursuant to a federal grant. Consulting engineers, working on behalf of their client local governments, are continually frustrated by the inefficiencies of grant programs. Streamlining the federal grant assistance system will better fulfill the Congressional intent of these programs, enable engineers to spend more time on engineering and save taxpayers' money at all levels.

S. 45, like its predecessor in the 96th Congress, S. 878, includes provisions to standardize regulations, consolidate categorical assistance programs, require single audits and extend certain administrative "rights" to municipal recipients of federal grants. Our members endorse these reforms and urge the Subcommittee to consider amendments which will strengthen the audit procedures and Title V, "Regulatory Flexibility".

The consolidation of many categorical programs to improve efficiency in the federal system makes a great deal of sense. However, once Congress approves consolidation of these programs, new regulations should be simple and clear. Consolidation plans for grant assistance should: (1) simplify requirements; (2) reduce federal reviews and paperwork; and (3) reduce the number of federal and state "hands" reviewing, evaluating, approving and auditing the project.

Many federal programs, especially those for the improvement, expansion or development of community facilities are similar in objectives but have inconsistent or even contradictory regulations which make it difficult for local governments to joint-fund such projects. Often such assistance is awarded in multiple steps, such as planning, design and finally construction. Successive grant awards for projects funded by more than one federal agency depend not only on producing satisfactory results in the earlier stages, but coordinating necessary reviews by the different agencies to assure that the different elements of the funding package are on track.

As an example, let me cite the grant programs of the Economic Development Administration (EDA), Farmers Home Administration (FmHA), the Department of Housing and Urban Development Community Development and the Environmental Protection Agency Wastewater Treatment Construction Grants. Each of these programs has a common objective -- providing funds to local governments to upgrade basic infrastructure for water and sewer systems. Joint funding or multiple grant coordination of a project, such as the planning and building of an industrial park and providing a water treatment and sewage treatment system to service it and the surrounding residential community, should be possible, assuming that eligibility criteria for each program are all met. The reality is that consolidation of even two grants at the local level is a nightmare of multiple reviews, inconsistent administrative structure and contradictory documentation requirements. The Environmental Protection Agency (EPA) and the Farmers Home Administration have, for example, been attempting to resolve a conflict in the requirements for documentation of engineering services contracts for more than four years. The inability of the two agencies to agree costs small communities months in project approvals and thousands of dollars in unnecessary administrative costs. There are an estimated 3,000 to 4,000 such projects which are jointly funded by EPA and FmHA. Similar situations involving highways, parks and mass transit facilities also frequently occur. Cross-cutting requirements, addressed in last year's bill, frequently add to the problem.

We endorse the objectives of the Financial Management and Audit title that would "provide for a single, independent financial and compliance audit of state and local government, at least once every two years." This section should be amended to provide for a pass-through provision to those providing professional services to grantees, such as consulting engineers.

During the past 12 months, ACEC has received more complaints from its members who perform engineering services for local governments about the multiplicity of federal audit interpretations than in the previous three years combined. We believe the main reasons for the increase are the inconsistencies, changes in policy and duplications in federal agency audits. In response to a recent request from the staff of the Senate Committee on Governmental Affairs regarding the most burdensome paperwork requirements, consulting engineers overwhelmingly identified audits, most related to grant-funded projects, as the most burdensome. We know that these complaints of our members reflect the same problems experienced by their client local governments.

ACEC supports the concept of a centralized audit function. However, as long as each agency has its own auditing department, legislative provisions to establish uniform audit procedures will be difficult to implement because of differing audit criteria and interpretations. Nonetheless, uniform legislative guidelines are necessary and should include: (1) standardization of federal audit criteria; (2) mandatory review by a single agency of new interpretations in the uniform procedures; and (3) direction to all agencies to accept the first audited overhead rate.

Local governments and professional services providers, such as consulting engineers, are literally besieged with federal auditors. Despite the issuance of the Office of Management and Budget's Circular A-102, Attachment P, which requires federal agencies to designate a single audit agency, multiple audits are still a major problem. This is particularly true on negotiated overhead rates.

Overhead rates are required to be established for most grants and for professional service contracts under grant programs. These rates are often not based on actual cost, but on allowable cost policies established by various agencies. There is little consistency among agencies on the interpretation of these policies. Agency auditors are invariably late on establishing overhead rates and, despite inflation, current rates cannot be used until certified. Some firms doing business under grants for local governments have not yet had overhead rates certified from projects completed in 1978. This creates uncertainty and fiscal chaos in local governments' accounting and upsets local budgets.

Multiple audits have become so commonplace to engineering firms that many have set aside special rooms for auditors and have designated full-time staff to do nothing but work with the federal auditors. An agency audit team will often work over the books to determine an overhead rate reviewed by a different agency team the week before. Many firms have told us that there is always at least one audit team in the office reviewing a contract under a grant or an overhead rate. The firms' client local governments often experience the same parade of auditors reviewing the same books. However, because the agencies do not have consistent audit criteria, the resultant overhead rates are often widely divergent.

We would recommend that the bill include some specific language to require reforms on delays in grant approvals and changing regulations. Let me cite the record of most grants programs for public facilities construction as an example of the impact of these two common practices. Delays in decision-making on public facilities grants and changing regulations during such projects have lengthened completion times to between five and ten years. Comparable private-sector or non-federally-funded local projects are completed in half that time, or less.

Much of the delay is due to indecisiveness by federal project review officers. Many federal grant programs have become circumscribed, not only by their own regulatory processes, but also by so-called social requirements that have very little to do with agency or project objectives. In some cases, these requirements have been included in agency legislation, such as the Davis-Bacon area labor wage rate determinations. In other cases, they have been incorporated by reference into regulations. This is particularly true of environmental impact assessments, archaeological and historical evaluations, endangered species reviews and many others.

In testimony before the House Committee on Public Works and Transportation last year, 54 separate statutes were identified as having an impact on thw EPA Wastewater Consltruction Grants Program. However, EPA's own regulatory process compounded these impacts by their continual changing of agency administrative and regulatory requirements. Under pressure from several Committees of Congress and language in their

Fiscal Year 1981 appropriation to limit this practice, the Agency has begun the process of "streamlining" regulatory requirements.

The practice of unnecessary impact studies, changed requirements and delayed decisions is not limited to EPA. Highway standards revisions have caused many projects nearly complete in design and ready for construction bid to go back to the drawing board. The Federal Emergency Management Administration li-erally reversed itself on the objectives of its flood insurance program last year and told local governments and their engineers that not only was FEMA changing the rules, but costs already incurred by local governments were no longer grant-eligible. The Federal Bureau of Prisons has requested local governments to hold land aside as part of an urban renewal program and then reneged on their commitment years after the project was designed into a city renewal project.

We believe that S. 45 needs to be made stronger in Title V to assure that wasteful delays in decision-making and changes in regulations are not perpetuated as a routine way of doing business by grant agencies. We therefore urge the Committee to include our recommended amendments.

We thank you for this opportunity to testify and would be pleased to answer any questions.

Amendment to S. 45

Title V, Miscellaneous

Section 502, Procedural Safeguards and Regulatory Flexibility

On page 48, line 12 (of theCommittee Print), delete "." and insert ";" and add:

> "(4) review and either approve or reject applications for Federal financial assistance within 90 days of the date of application submission by the state or local government to the agency. Provided, however, that requests to the applicant state or local government for clarification, additional information or documentation required to be supplied in the application shall be made by the agency within 45 days of the date of application submission and shall extend the period for final decision on the application by 45 days from the date such additional information is submitted."

Amendment to S. 45

Title V, Miscellaneous

Section 502, Procedural Safeguards and Regulatory Flexibility

On page 48, delete Section 206(a) and insert the following substitute section:

"(a) Whenever --

(1) A federal agency which makes grants to state or local governments adopts a major change in any regulation for the administration of such grants or in any statement or document of the agency specifying conditions for the receipt of such grants; and

(2) Such change would result in additional capital, operating or administrative expenditures by a state or local government receiving or applying for a grant in a fiscal year, in an amount in excess of ten percent of the estimated capital, operating or administrative costs of such grant in such fiscal year; and

(3) Such change dould delay planning, design or implementation of the project under the grant or other assistance for more than 90 days

the agency shall inform the state or local government of the change and shall include with such changed regulation, guideline, statement or document an appendix containing provisions to carry out Subsection (b).

> (b) Any state or local government receiving a grant covered by Section 206(a)(1), (2) and (3) prior to the effective date of such changed regulations, statements or documents, which has incurred or would incur capital, operating or administrative costs equal to ten percent of the grant and be delayed more than 90 days in the implementation or application for such grant, shall receive the grant under the provisions of the regulation, statement or document in effect at the time such government applied for or was granted assistance. Provided, however, that such changes may be applied to applications or grants to the extent such changes reduce, simplify or streamline regulatory requirements, or achieve substantial savings in federal, state or local costs to implement the grant."

Senator DURENBERGER. Our final witnesses are William Kelleher and John Nesbitt.

Mr. Kelleher is associate professor for construction, housing and community development of the U.S. Chamber of Commerce. Mr. Nesbitt is with the Middletown, Ohio Chamber of Commerce.

Bill and John, we welcome you to the hearing and apologize for holding you to about 20 minutes. I express, in advance, our appreciation to each of you for your commitment to this subject.

TESTIMONY OF WILLIAM D. KELLEHER, ASSOCIATE DIRECTOR FOR CONSTRUCTION, HOUSING AND COMMUNITY DEVELOPMENT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES; AND JOHN E. NESBITT, MIDDLETOWN, OHIO CHAMBER OF COMMERCE

Mr. KELLEHER. I am Bill Kelleher, associate director for construction, housing and community development of the Chamber of Commerce of the United States. With me today is John Nesbitt. Mr. Nesbitt was chairman of the subcommittee of the citizens' task force that produced the projections for Middletown, Ohio, which is being released in Middletown today.

If I could, I will briefly summarize my statement and then ask John to outline his Middletown report.

Our basic feeling is that there has been an explosion in the grants and dollars of the program. However, this has been matched by an explosion in regulations, which has negated much of the benefit. Also, many of these grants have been funded through deficit spending attributing to inflation. Our feeling is that many of these programs were put together during the Great Society when our economy was in much different shape. Today, given stagnant growth and price volatility, there is a need for a period of consolidation. We are not presupposing dismantling the welfare state, but a review of priorities to eliminate inefficient programs which would out-sacrifice services for the truly needy.

The President's program for the economy contains a number of programs. The chamber hopes you will endorse those as well in their entirety.

Finally the chamber supports the concepts of grant consolidation, joint funding, increasing local flexibility and reducing Federal regulatory mandates. We believe, in doing this, you should respect the rights of localities, recognize the overall limits of government, express appreciation of private rather than public means, look to those levels closest to the people and periodically review all programs.

In conclusion I will state that our ultimate objective here is to look again at the balance between the Federal Government and the State and local governments. We feel there are many programs that reflect true needs, but are not necessarily national. We believe there is a need for the ultimate reform of many Federal programs.

I would like now to ask John to outline what has been completed in Middletown, Ohio.

Mr. NESBITT. Thank you, sir.

Before going into the abbreviated body of my presentation, I would like to give two points as to how this task force and Federal spending originated in Middletown. The national chairman of the chamber of commerce currently is Mr. William Verity of Armco. Armco is located in Middletown. It was his and the U.S. Chamber's theme for the 1980's to "Let's Rebuild America." Our own Middletown Area Chamber of Commerce in December, picking up on the national theme, began discussions on how our local chamber could contribute to the changing mood of the country—that is, the desire for less government pending Mr. Reagan's election. Nobody told the Middletown Chamber of Commerce exactly what to do, not even Mr. Verity. Actually the motivator of this task force study was our own local chamber president, Mr. Richard Smith.

This leads to my second point. Mr. Smith and our local chamber commenced the task force, its purpose, and its activities prior to President Reagan's inauguration. We, therefore, preceded his program for economic recovery. I bring this out to demonstrate that our task force in Middletown was a grassroots action and not part of any preplanned effort to reinforce the President's program currently being debated in this Congress.

Middletown is not unique. There are 15 other States with cities named Middletown. There are 117 other cities with 40,000 to 50,000 in population. It has been said that Middletown, Ohio is, in effect, "Middletown, U.S.A." It was our city that convened a special task force on Federal spending. They organized the committee. Ten members of the 25-member committee were not members of the chamber of commerce. They were community leaders—the school superintendent, the city manager, et cetera.

Our objective at the outset was to identify the nature and the amount of Federal funds coming into Middletown, to create a public awareness of the use of Federal funds in the community, and to bring forth any general findings or recommendations, having discussed these various programs' merits.

Our task force committee received presentations from nine community officials who administered the bulk of those Federal funds. At the outset we were informed by our city manager that some $53 million in funds were directly sent into the city of Middletown. Yet the task force found an additional $30 million that came into the city by indirect funding methods.

One of the interesting findings of our task force is that when we divided the number of people into the $83-million-plus figure, it equates to almost $2,000 per person—man, woman and child in the city.

Our general findings from these presentations come as no surprise. Please let me briefly state them. Programs exceeded their original intent for which they were legislated. Administrative costs, eligibility and verification problems are common in these programs. There is duplication throughout these programs. And, lastly, many Federal programs serve as a disincentive to get people back to work.

As an example, in Middletown, if a steelworker is laid off, he can be compensated on unemployment for 85 percent of his earnings. He can also pick up food stamps, both of which are tax free. He will be better off staying out of work for at least a year rather than looking elsewhere for a job.

What may be of greater interest to you, though, are the exact recommendations of the task force.

First, eligibility requirements for programs, such as school lunches and food stamps, should be substantially strengthened. Verification of information should be made easier for program administrators. Further, administrators need the authority to monitor recipients' circumstances to evaluate their continued eligibility.

Second, regarding the use of Federal block grants, there should be an increased emphasis on direct distribution of Federal funds to local agencies. This will, in most cases, eliminate one or two levels of government "layering" and allow administrators more flexibility in meeting local needs.

Third, regarding social security improvements, Social Security Administration benefits should remain intact at this time. The minimum benefit program, however, should be eliminated because it represents duplicate payments and will not affect the needy. Social security benefits to students between the ages of 18 and 22 should be eliminated because other student assistance programs fill these needs. The disability insurance requirements should be tightened.

The fourth recommendation regards the Consumer Price Index. It should be modified as it applies to Social Security and many other Federal programs. The Consumer Price Index is an inaccurate index on which many increases in payments are made. The CPI overstates inflation's impact by incorporating a residential mortgage rate factor. We recommend developing an index without this factor.

The fifth recommendation is to limit CETA programs. The public service employment titles of the CETA program should be phased out.

Sixth is related to reducing housing subsidies. Federal funding for low-income housing needs a substantial review of its purpose and the benefits achieved from the program thus far. Further, the task force concluded that the housing subsidy program acts as a deterrent to other private contractors to build competitive units.

And lastly, we recommend the increased usage of local funding sources. The task force has identified some federally funded programs in Middletown which should be more closely reviewed to determine whether they can be supported by local funds, user fees, or other private sources. Possible programs to be reviewed might include the community health clinic, Middletown Transit System, the low-interest loan program for rehabilitating houses—which is the 312 loan program, health care, the airport, and the waste water treatment.

As a concluding note to the task force study, we did inject one comment that may be of interest to your subcommittee, and that comment was:

> The limited 45 day period allotted for this task force was insufficient to permit specific dollar recommendations in each program's future funding level. Nonetheless, a firm consensus was evidenced that a reduction in Federal funding can be supported without unacceptable loss in serving the needs of Middletown or its citizens. The Task Force is of the opinion that a sizable reduction in Federal funding is achievable through the implementation of these forementioned recommendations.

That is my text, sir.

Senator DURENBERGER. Speaking of Middletown—as long as you finished it—the figures I heard you talk about was $53-plus million and another $30 million indirect. In that $83 million total, did you get into social security and unemployment?

Mr. NESBITT. Yes, it did. The $30-odd million represented $12 million for social security, $14 million for welfare, $2 million from county government and $2 million miscellaneous.

Senator DURENBERGER. What do you intend to do with the study that is being released today?

Mr. NESBITT. It is being released today in Middletown. Mr. William Verity of the national chamber will present it to their annual meeting in April. I think there are 1,000 kits that are being produced so that this same task force concept could be duplicated by other chambers of commerce throughout the United States.

Senator DURENBERGER. This was a 45-day period of time?

Mr. NESBITT. Yes, it was. We decided to conclude the Task Force Report by making recommendations, knowing that Mr. Verity could show this report to other chambers of commerce. If one local community can do it, others can do the same.

I can tell you that this morning when the task force report was received, it was endorsed and even more strongly recommended by the board of the Middletown Chamber of Commerce. They would like to put it into a permanent committee—a committee dedicated for the purpose of finding other funding sources in advance of Federal funds being curtailed or reduced to the State and local level.

Senator DURENBERGER. Did you take a look at the endorsement for the President's budget cuts? That is what I heard you say. Did you take a look at them in this process? Did you disagree with any of them?

Mr. NESBITT. We heard many of the key personnel representing different agencies suggest that their program should remain. No, our committee took nothing away from the President's program. In fact it almost reads like a pure endorsement of it.

Senator DURENBERGER. What about the issue or the role of the State of Ohio meeting some of the needs which you identified as being met by the Federal Government? What about its conclusions with regard to the State of Ohio taking over responsibilities for meeting those needs?

Mr. NESBITT. The only one that comes to mind is the block grant program. Our school district superintendent found a problem with the categorical grants and the mandates related to them as they are filtered down to the local school level.

I also think the housing authority administrator had similar views as well.

Senator DURENBERGER. There are some of us who think that the time is coming for the Federal and State governments to make some decisions about who is responsible for what functions of society. It may be more appropriate and more cost effective for the Federal Government to concentrate on some of the people-oriented functions and let the State governments work on the place-oriented problems.

Of course, Ohio is a great State to live in. But it seems to have problems financing education, and sometimes a few other things. It would be interesting to know how the State of Ohio would react to some possible changes in the financing that returns some of this responsibility to it.

Mr. NESBITT. Part of this is hearsay, yet from a very reliable source. The school lunch program is notorious in the city of Cleveland. Many, if not most, of the students receive some direct lunch benefits. Yet we would certainly all have to agree the people in Cleveland with children don't all need school lunch funding. That problem is more prevalent maybe in the Cleveland or Columbus area than it is in Middletown. Nonetheless, it is almost a half million dollars for 20,000 or 30,000 students. That is a large dollar amount.

I might recommend as an alternative, and I say this personally as a businessman, that they may be better off considering lump sum grants and saying "This is all the money that will be allocated for these programs." You tell us how you want to use them and set up the auditing procedures, as was spoken to earlier today.

Senator DURENBERGER. The reason I raise the other issue in response to school lunch programs is because I am as frustrated as you that the National Government subsidizes my kids for the 35 cents for lunch. It is not that my kids need it, but the school district needs the cafeterias and kitchens. They don't want my kids brown-bagging. So, it is not necessarily all our fault, pointing at the National Government in terms of trying to find out the so-called efficiency in the system. The value of what you are doing will go far if it is used to get State and local governments more involved in determining alternative delivery systems.

But I thank you for the effort and I am sure glad that somebody did this.

Bill, I want to ask you one question about your statement. I'm starting to get concerned. This is about the third time I have seen a statement by a chamber of commerce in the United States of America relative to some of the health care issues. I am starting to be concerned about how much work went into this and how widely this is being disseminated. I'm referring to the paragraph on page 5 of your statement—where you say, "That had no impact in slowing the escalation of health cost." I don't think you can prove that statement.

Second, the statement about the fact that "they cost more than." I raise this only because if this is the chamber's opinion, it should be stated as such. There is a substantial body of evidence to the contrary, which is not to endorse the way these planning and cost agencies have been working. Many of us disagree with that. The implications that they don't work and may cost money is probably a disservice to those that are working and are saving money in the effort. Some of us are trying to learn from the good ones and apply it to the bad ones so we can do something about containing costs.

Mr. Kelleher. Sir, my response to that is, that is the finding of our health panel. I will be glad to send you a copy of their decision. I agree that all of these programs, certainly individual ones, will work. If you look at the trends in terms of beginning six medicaid and medicare programs and going back to the 314 Bs, et cetera, they have simply not done much in terms of keeping health costs even close to overall CPI.

Senator Durenberger. Then your people stopped endorsing competition.

Mr. Kelleher. We have always liked things that provide the insurance process. I think our rule on that 5-percent cap is simply where they will try pocketbook discipline. We certainly need to look at these issues, but anything embodies standards there. Another community may say, "We want one, too, and if you won't give it to us we will buy it ourselves." We have not seen this effect. Whether the dollars can be argued one way or the other, I don't know, but we will send you what they have done.

Senator Durenberger. Let me thank you both for your testimony. I have to run over now and support our local President. I am indebted to you for the work in both of your statements, and for your coming here today to testify. Thank you very much.

[The prepared statements of Mr. Kelleher and Mr. Nesbitt follow:]

PREPARED STATEMENT OF
WILLIAM D. KELLEHER AND JOHN E. NESBITT

I am William D. Kelleher, Associate Director for Construction, Housing and Community Development of the Chamber of Commerce of the United States, on whose behalf I am appearing today. Accompanying me is John E. Nesbitt of the Itaglio Group, Incorporated. Mr. Nesbitt is a member of the citizen's task force that reviewed federal spending in Middletown, Ohio and was chairman of the subcommittee that drafted the final report.

The U.S. Chamber is the world's largest business federation comprised of more than 112,000 businesses, chambers of commerce in the United States and abroad, and trade and professional associations. On behalf of our members, we welcome this opportunity to support the Subcommittee's efforts to return order and economy to the federal grant-in-aid system which now spends over $80 billion annually.

Perhaps the most difficult task facing the new Administration and Congress will be to control federal spending. The federal government's share of the gross national product has increased steadily from around 18% in the early 1960's to a projected 23% (see Table I) in this fiscal year. Whether the budget growth is financed by taxes or borrowing, this increase adversely affects our economic performance by absorbing ever-increasing amounts of resources from a weakened private sector, resources that could better be used by individuals and businesses to meet the challenge that now confronts us.

Control of federal spending has been for years a major objective of the U.S. Chamber, and is currently a top priority in our Let's Rebuild, America program. This program offers concrete proposals that can help our country bring inflation under control, rebuild our economic base, regain our position of international leadership, and rekindle confidence in our country's basic institutions. The program's comprehensive recommendations are summarized in the publication, Let's Rebuild, America, which we are happy to make available to this Subcommittee.

For the past twenty years, this country has tended to view federal spending as a costless way of solving perceived problems or meeting newly devised national objectives. Unfortunately, however, the government has failed to consider what effect this shift in resources would have on the private sector's ability to compete in a more competitive world. Government also failed to realize how expensive these programs would become as benefits were expanded to a greater number of recipients.

Since the heady days of the Great Society, there have been considerable changes in our economy that necessitate a complete and thorough evaluation of government spending programs. The issues confronting the American economy at present are radically different from those of the mid-Sixties, when much of the expansion of the public sector was undertaken. During the 1960's, high real growth and comparative price stability made expansion of transfer payments and government service programs appear relatively costless.

Currently, however, stagnant real growth and continued price volatility make the economic costs of additional government spending prohibitive. Instead, a period of retrenchment and consolidation is called for. This does not presuppose a dismantling of the welfare state so much as a systematic review of fiscal priorities designed to eliminate ineffective programs without sacrificing essential services for the truly needy.

The grant consolidation legislation before this Subcommittee is an important step in this process and we support your efforts. There is a need for legislation, such as S. 45, that will encourage consolidation of federal programs, improve the audit practices used to monitor federal grants, enable state and local governments to adapt programs to specific local situations by drawing on appropriations from more than one federal program and to streamline federal policy requirements attached to federal assistance programs.

President Reagan's Program for Economic Recovery, which the U.S. Chamber endorses in total, contains several efforts at grant consolidation. We hope you will work to enact them and the entire Reagan package. Restoring the Nation's economic health is an important part of putting the federal system back into balance.

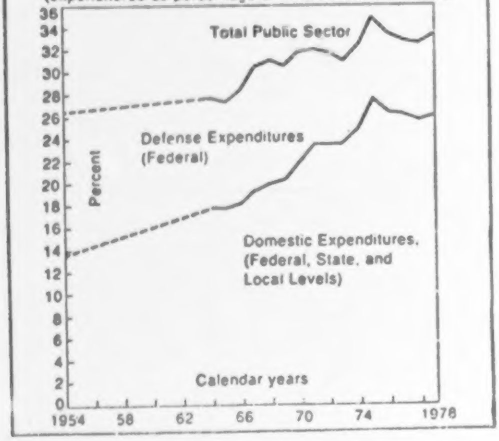

Table I
The Growing Domestic Public Sector—
The Relative Decline in Defense Expenditure,
1954-79*

*Source: Advisory Commission on Intergovernmental Relations (ACIR)

Federal Aid: Help or Hindrance?

Since 1960, there has been an unprecedented growth in the role of the federal government in state and local affairs. The number of categorical grant programs has increased some 10 times, from approximately 50 programs to 500 (see Tables II and III). This has been matched by an equal explosion in the number of mandates placed on local government -- mandates that may now number some 1,200 (see Tables IV and V). This vast array of federal programs covers everything from road construction to family planning and its mandates now cover almost every aspect of state and local government. Mandates now cover everything from drinking water standards to building accessibility. It is a system that has grown through sustained incrementalism without any real relationship to the national welfare.

While many of the programs developed during the last twenty years deal with real problems, they are not problems that should be dealt with at the national level. The continued growth of federal grants and mandates has resulted in a system of government that is increasingly becoming isolated from the wishes and aspirations of the majority of Americans. Government is becoming too large, too complex and too distant from the average citizen or business, and as a result is losing its legitimacy.

For example, of the 500 grant programs available, 450 of them are allocated only 10 percent of the grant funds available. This results in a great many special interest grants of a relatively small size that have administrative costs running as high as 30 percent in various special education programs. The result is grants that make no significant contribution to solving the targeted problems.

This high number of special purpose grants also reflects the bureaucratic turf battles fought by the federal establishment here in Washington. Competing departments or agencies rush forward with detailed plans and programs based on their special interests and perspectives. With the help of specialized committees in Congress and various support groups, many of which are funded by the agency administering the program, they launch another new program. Thereafter, it is in the interest of each of these groups to support continuation of the program regardless of results.

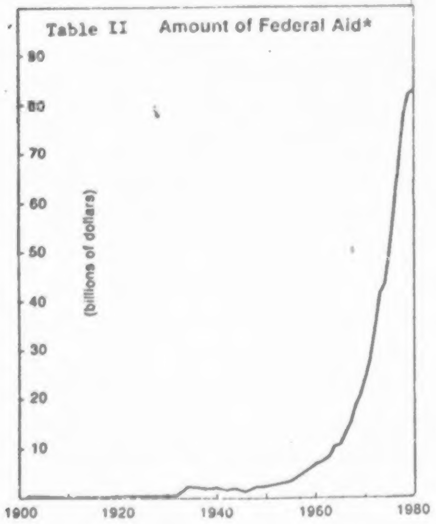
Table II Amount of Federal Aid*

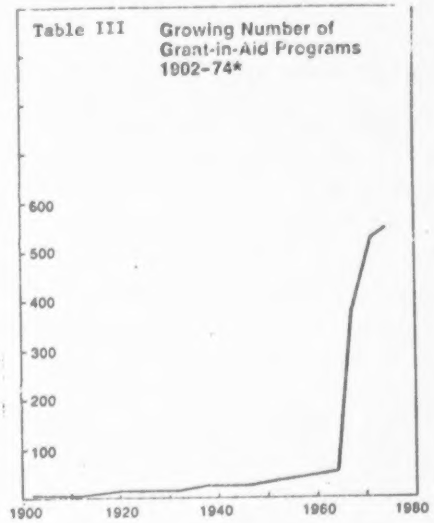
Table III Growing Number of Grant-in-Aid Programs 1902-74*

*Source: ACIR

As an illustration, the various health planning and cost containment agencies that were put into place with the creation of Medicaid and Medicare have had no real impact on reducing or even slowing the escalation in health costs. In fact, Professional Standard Review Organizations (PSRO's) actually cost more than they save.

Another example of ineffective programs that continue, regardless of results, is the package of aid provided to cities. Programs such as 701, Comprehensive Planning Assistance, have spent hundreds of millions of dollars without significant results. Programs such as Urban Development Action Grants in urban areas have put the federal government and many cities into the real estate development business, while they ignore the results of excessive regulation and taxation and the continued poor performance in the provision of municipal services.

A former mayor of Indianapolis, Senator Richard Lugar, speaking on the U.S. Chamber television program, "It's Your Business" noted that he would have traded all the federal aid given his city if inflation could be reduced and eventually eliminated. Inflation, more than any other factor, was pushing his city's costs beyond the local capacity to respond.

Recently, the Chamber held a series of six regional small business legislative-regulatory conferences across the country in cities such as St. Paul, Philadelphia and Los Angeles. The message these small business people wanted to send to Washington was this:

> If I did not think I could make it on my own, I would not be in my own business. You do not have to pass regulations or programs to help me, just get rid of the regulations standing in my way.

Program Growth

The growth of federal programs has also resulted in a loss of organization and accountability in the provision of public services. With each level of government claiming responsibility for public services, we have a system in which everyone seems to be in charge. But as any good executive would tell you, when everyone is in charge, no one is in charge because no one is accountable.

Each level of government seems to blame the other for the failure of numerous programs. The federal government says the states are not responsive, the states and localities claim the Federal government has all the resources and, therefore, it is the problem. This has resulted in confusion in the public mind and an increasing centralization of power in Washington as the Federal government uses its resources and regulatory powers to force states and localities to take certain actions. However, because the Federal government is isolated from the realities of local situations, it often substitutes paper requirements for knowledge and effectiveness. This results in duplication of programs, such as the example cited by the General Accounting Office (CAO) when it found the federal government funding three separate family planning services in one community without any coordination or cooperation among the programs.

Many of these federal programs to reduce the burden on states and localities have actually resulted in costs to them because of requirements for matching funds and administrative overhead. These programs result in an escalation of the fixed costs of local government that is not responsive to the changing economic conditions in the Nation or in particular regions.

Mandate Millstone

Reducing the cost and complexity of the Federal grant system should be matched by a reduction in the Federal mandates placed on local government. While many of the goals behind certain Federal mandates are well intentioned, they all

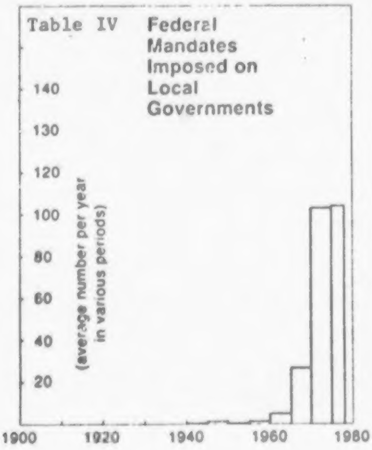

Table IV Federal Mandates Imposed on Local Governments

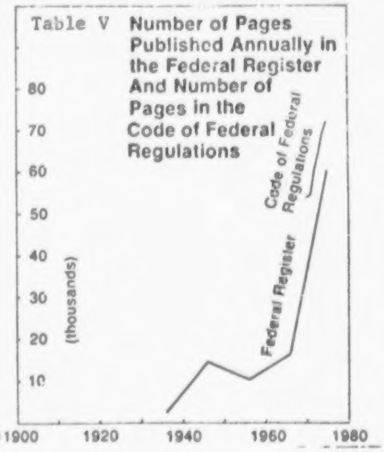

Table V Number of Pages Published Annually in the Federal Register And Number of Pages in the Code of Federal Regulations

*Source: ACIR

too frequently do not result in beneficial outcomes. Also, many of these mandates merely reflect a current theory or concept and have no real basis in need or justification in performance.

A number of the mandates impose costs and establish goals but fail to provide either funds or certainty that the technology is available to meet the goals. For example, the 1974 Safe Drinking Water Act imposed water quality standards on states, but failed to provide money to meet the standards on the ground that ensuring safe drinking water was a state responsibility.

While the Federal government continues to hand many older cities grants to help them, they impose costly regulations and mandates that often negate the benefits of the grants. For example, Mayor Edward Koch of New York claims that some 47 Federal and state mandates will cost the city some $711 million in capital expenditures, $6.25 billion in expense budget and $1.66 billion in lost revenue over a four year period. Research done by Thomas Muller and Michael Fix of The Urban Institute also indicates that Federal mandates impose more costs than federal grants provide in benefits. For example, according to the Muller and Fix research, Newark, New Jersey, was spending $1.29 for every dollar received from Washington just to comply with five federal mandates.

There is a critical need to remove the regulatory burden imposed on both the private sector and state and local government.

Middletown, Ohio -- A Local Community Looks at the Real Value of Federal Aid

For many Americans, the election of last November marked a significant change in their thinking about the role of the Federal government. Many individuals and communities realized that they had become too dependent on Washington and needed to re-assert control over local affairs and become more self-reliant. One such community was Middletown, Ohio, where the Middletown Area Chamber of Commerce formed a Citizens' Task Force to Review Federal Spending in Middletown, Ohio.

The concept of a citizens' review of federal spending at the local level is not to conduct a "witch hunt" or "point fingers." It is a serious attempt by a broad coalition of business people, private citizens, civil servants and local elected officials to examine the total federal spending problem and to seek out ways to cut that level of spending for the benefit of the entire community.

In January 1981, the Middletown Chamber established the task force. It gathered information on all the federal dollars flowing into the community. In a series of public meetings, task force members looked at the value received from the federal money they spent. They found that many of the local public officials administering the programs under review shared their concerns and helped them in identifying areas of waste and inefficiency. They were also helpful in suggesting ways to improve service delivery using local rather than federal resources.

In summarizing the results of this effort, Hal Kramer, Executive Director of the Middletown Area Chamber, noted:

> Middletonians are telling Washington: 'We've looked at the level of Federal dollars coming into our community, and we are convinced that this can be significantly reduced without compromising any genuine need. We urge you to proceed with your budget cutting. Further, if you'll not take so many of our dollars in the form of taxes, we'll have more money here to take care of local matters. We'll stop coming to you every time we think we have a need'.
>
> I believe that this is a powerful idea that makes a great contribution not only to Middletown, but to the Nation.

The final report of the Middletown Citizens' Task Force is being released today in that community. I have enclosed a copy of the report for your consideration and a summary of the action plan followed in Middletown is included in this statement as Attachment 1.

Also, as part of our "Let's Rebuild, America" program, the U.S. Chamber is planning to distribute 1,000 action kits outlining the Middletown experience to help other communities conduct a similar review.

Other Chamber Actions

Distributing these action kits is part of a long U.S. Chamber tradition of helping local communities develop the capacity to deal with their own problems at the local level. Another example of a recent U.S. Chamber action in the fiscal management area is our publication, Improving Local Government Fiscal Management: Action Guidelines for Business Executives. This publication provides support and encouragement to local business people in becoming involved in improving local fiscal management. The Executive Summary of the book is contained in Attachment 2.

Summary and Recommendations

The federal grant-in-aid system is in serious need of reform. Consolidating numerous categorical grant programs, improving coordination between various federal funding sources in the grant-making process and providing orderly and effective auditing requirements to reduce fraud and abuse are important first steps. We support legislation to accomplish these objectives. We recommend that Congress match this effort in grant reform with reform of the mandates imposed on states and localities. The following principles should guide you in this process:

- Respect for the rights of states and localities in performing their valid public functions;
- Recognition of the limits of government and the need for flexibility in government programs;
- Preference for private, rather than public, means to accomplish objectives;
- Locate programs at the level of government as close to the need as possible; and
- Provide for regular reexamination of all programs and mandates.

While we support legislation to improve the efficiency and effectiveness of the federal grant-in-aid system through grant consolidation, that should be but an initial objective. The ultimate objective must be to return to a genuine balance of functions and resources among federal, state and local governments. The final step in reforming many of the grant programs currently provided by the federal government will be their total elimination and return of the function and funds to the state and local levels where they can be provided in a form that conforms to human scale and provides for efficient use of public funds.

ATTACHMENT 1

CITIZENS' REVIEW OF FEDERAL SPENDING: AN ACTION PLAN FOR COMMUNITIES *

Adapted from the Middletown, Ohio, Chamber's Experience

Goals: To reduce community dependency on federal funds and thereby develop support for the President's proposed spending cuts.

Tasks:

1. To catalogue all Federal spending in the community, including funds flowing through non-direct channels, such as state agencies.
2. To personalize for individuals the impact of Federal spending on their lives; to make people more aware of how much Federal money finds its way to their community for what programs.
3. To identify overlapping and duplicated programs and to assess the value of other programs to the community.
4. To offer recommendations to local government regarding the flow of Federal dollars in the community.
5. To assure that at all stages of this review process, media, members of the Congressional delegation and selected community leaders are integrally involved in and aware of the Federal spending review efforts.

Action Steps:

1. Local chamber of commerce Board of Directors commits to conducting a Citizens' Review Program to catalogue Federal spending levels and review the programs funded.
2. Assemble the Citizens' Review Group and form subcommittees that reflect the flow of funds into a community. Typically, these will include: the city administration; the local school systems; hospitals; United Way agencies; welfare and public housing.

   To best legitimize the Citizens' Review Group's efforts, other community leaders should serve with business executives in the Group.
3. Use Geographic Distribution of Federal Funds ** and information available from regional planning agencies as the primary sources of Federal spending data in your community. Also, the Citizens' Review Group and its subcommittees should work with those locally involved in the administration of federally assisted programs.
4. After the subcommittees catalogue and review the data they gather, they should target areas for further study.

   These studies should include an evaluation of the effectiveness of the programs in question, an exploration of alternative sources of funding and an examination of management practices.
5. Upon conclusion of the studies, recommendations can be developed and forwarded, after Board review, to appropriate units of local government.

* Prepared by the U.S. Chamber of Commerce, February 25, 1981.

** For sources, see other side of this sheet.

GEOGRAPHIC DISTRIBUTION OF FEDERAL FUNDS IN (name of state)

These publications show amounts of federal funds that went, directly or indirectly, into each county and city (to individuals, school systems, local governments, hospitals, welfare and public housing agencies, etc.).

To inquire about this data source, you can contact:

Office of Public Affairs
Community Services Administration
1200 Nineteenth Street, N.W.
Washington, D.C. 20506

or, Regional Offices of the Community Services Administration at:

Region I - Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont
John F. Kennedy Federal Building
Boston, Massachusetts 02203 Telephone: 617-223-4080
Region II - New Jersey, New York
26 Federal Plaza
New York, New York 10007 Telephone: 212-264-1900
Region III - Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
Gateway Building, 3535 Market Street
Philadelphia, Pennsylvania 19104 Telephone: 215-596-1000
Region IV - Alabama, Florida, Georgia, Kentucky, Mississipi, North Carolina, South Carolina, Tennessee
101 Marietta Street, N.W.
Atlanta, Georgia 30303 Telephone: 404-221-2717
Region V - Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
300 South Wacker Drive
Chicago, Illinois 60606 Telephone: 312-353-5562
Region VI - Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1200 Main Street
Dallas, Texas 75202 Telephone: 214-767-6125
Region VII - Iowa, Kansas, Missouri, Nebraska
911 Walnut Street
Kansas City, Missouri 64106 Telephone: 816-374-3761
Region VIII - Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Federal Building, 1961 Stout Street
Denver, Colorado 80294 Telephone: 303-837-4767
Region IX - Arizona, California, Hawaii, Nevada
450 Golden Gate Avenue
San Francisco, California 94102 Telephone: 415-556-5400
Region X - Alaska, Idaho, Oregon, Washington
Arcade Plaza Building
Seattle, Washington 98101 Telephone: 206-442-4910

EXECUTIVE SUMMARY—IMPROVING LOCAL GOVERNMENT FISCAL MANAGEMENT ACTION GUIDELINES FOR BUSINESS EXECUTIVES PUBLISHED BY THE CHAMBER OF COMMERCE OF THE UNITED STATES

The fiscal problems of some of the Nation's larger cities, such as New York and Cleveland, have received much publicity. However, small communities have been in similar predicaments. A number of communities whose financial health is considered to be relatively good are actually following policies and facing forces similar to those which got New York and the others into difficulty. In short, local fiscal trouble is widespread.

Chapter 1 identifies several factors that should motivate business executives to offer appropriate fiscal assistance to local government. First, a fiscally ailing community can adversely affect companies in terms of markets, tax burden, attraction and retention of employees and protection of capital investments. Second, various trends underscore the need for such assistance. For example, during a recent five-year period, local governments experienced major increases in expenditures, employees and debt outstanding. Many communities must contend with problems such as static or declining population, voter backlash on rising property taxes, reduced tax and economic bases, continued buffeting from recession or inflation and hitherto unacknowledged pension liabilities. Third, organizations in the public and private sectors have called on the business community to respond to the fiscal needs of local governments.

The question, therefore, is not whether business should respond but how. Chapters 2 through 7 contain guidelines on how business executives can effectively help their communities develop—or maintain—strong fiscal management.

Overall, this publication presents an action plan that maps the various options and steps applicable to a wide range of problems, such as those outlined below.

Problem: What is the best way to deal with public officials and how should business executives organize themselves for fiscal assistance efforts?

Action: Develop an understanding of the major differences between government and business. Observe the basic do's and don'ts when working with governmental employees. Evaluate the organizational structure of business groups that have successfully helped local government improve its fiscal posture. See Chapter 2.

Problem: What will facilitate the identification of fiscal priorities and the introduction of key management techniques (such as delegation, performance measures and feedback) into fiscal affairs?

Action: Recognize the barriers to quick fiscal results and form priorities. Try to ensure that local government has access to information that is timely, relevant and in a form conducive to decision making. Become familiar with the danger signals of impending fiscal trouble; if one or more exist, set appropriate priorities. See Chapter 3.

Problem: How can municipal budgeting, accounting and financial reporting systems be improved?

Action: Take steps to bring them into conformity with generally accepted accounting principles. Familiarize yourself with the basic differences between governmental and commercial accounting. Be sensitive to the difficulties encountered by public officials during the budget preparation process. Evaluate the advantages and disadvantages of line-item, program and zero-base budgets. See Chapter 4.

Problem: Where should government expenditures be cut?

Action: Identify cost reductions obtainable in the short run. Of those, focus on areas where a dollar's worth of expenditure reduction will reduce local taxes by the same amount. Evaluate government services in terms of efficiency and effectiveness. Apply cost-benefit analysis as appropriate. See Chapter 5.

Problem: How much government is your community able to support?

Action: Explore the revenue potential by estimating future tax yields. Take into consideration the tax revenue implications of a growing or declining local economy and of tapping the regional tax base. Study the feasibility of putting greater reliance on such nontax revenue sources as user charges and fees. Determine if additional Federal aid is available; if so, consider its advantages and disadvantages. Review debt management policies of the locality, including whether adequate recognition is given to overlapping debt and to expanded disclosure requirements for issuers of municipal securities. Evaluate whether cash management policies result in significant revenue for local government, minimize the need for short-term borrowing and help establish a rational pattern for necessary borrowing. See Chapter 6.

Problem: How do such areas as productivity, technology, privatization, public employee unionization and management of the local economy relate to efforts to improve the financial outlook of local government?

Action: Review the primary methods (and associated obstacles) by which local government might increase productivity. Assess whether fiscal pressures could be reduced by application of technological advances or by having private firms provide public services (privatization). Determine if local governments' labor relations policies are effective or whether concessions have bargained away key management prerogatives. Evaluate whether better governmental management of the local economy might yield fiscal dividends. See Chapter 7.

This, then, is a publication to be used, not merely read. These pages are intended to arouse concern and stimulate action.

Since public officials seem to recognize increasingly that good economic and good fiscal practices are also good politics, business executives can anticipate that local governments will continue to request their help in shaping sound financial policies and procedures. The private sector's response to such requests should be immediate, positive, informed and constructive. The stakes are too high for anything less than that.

Senator **Durenberger**. The subcommittee stands in recess.

[Whereupon, at 4:05 p.m. the subcommittee recessed, to reconvene subject to call of the Chair.]

FEDERAL ASSISTANCE REFORM

WEDNESDAY, APRIL 22, 1981

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9 a.m., in room 457, Russell Senate Office Building, Hon. Dave Durenberger (chairman of the subcommittee) presiding.

Present: Senator Durenberger.

OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. The hearing will come to order.

Today we begin our third and final subcommittee hearing on grant reform legislation. We have two bills before us today: S. 45, the "Federal Assistance Reform Act of 1981," introduced by Senator Sasser; and S. 807, the "Federal Assistance Improvement Act of 1981," introduced by Senator Roth.

In two earlier hearings on March 11 and 25, Senators Roth, Levin, and Symms and distinguished State and local officials presented testimony on important aspects of grant reform. Today, we will hear from the Office of Management and Budget, the General Accounting Office and the Advisory Commission on Intergovernmental Relations.

Also present today are the AFL-CIO and the National Society of Public Accountants. The record will remain open until April 30 so that we may receive written statements from other persons interested in grant reform. As of today, we have received a written statement from Senator Sasser and statements from several nonprofit organizations. We appreciate their assistance.

The development of grant reform legislation first began in 1978. In the 96th Congress, the subcommittee considered S. 878 and S. 904. These two bills were combined in a version of S. 878 which was reported and passed by the Senate. No action was taken in the House of Representatives. The subcommittee now intends to act swiftly on this legislation in the 97th Congress so as to encourage favorable action in the House as well.

Both bills provide for greatly needed reform in the Federal assistance programs. However, meetings with others among staff have revealed that several differences remain to be negotiated and that neither bill alone resolves the many issues between the two approaches to grant reform.

Some of the major differences are in the consolidation title itself. Senator Roth's bill provides for the automatic discharge of a consolidation plan from a committee of primary jurisdiction if that committee does not act within 60 days. Senator Sasser's bill does not contain such a provision.

Issues in the auditing provisions concern the alternatives of either direct or indirect reimbursement of independent auditors.

Senator Roth's bill includes an integrated assistance program which contains a portability provision allowing grant program recipients to transfer funds among functionally related programs. S. 45 does not include this provision.

Finally, the miscellaneous title in each bill is unique and each contains various provisions regarding State and local governments, and Federal assistance programs. We believe that all of these issues will be resolved at the markup session to be held at a later date.

Yet, the common goal of this legislation remains the same: To create greater efficiency in the Federal Government as it administers assistant programs. It is not only clear that reforms for greater Government efficiency are needed, but that all Americans—particularly those who participate in the Federal assistance programs—welcome and support such efforts in Congress.

It is our hope, therefore, that by enacting grant reform legislation, we may meet the needs of the American people and be responsive to the problems in the Federal assistance programs.

At this point, without objection, I will insert the statement of Senator Sasser in the record.

[The prepared statement of Senator Sasser follows:]

PREPARED STATEMENT OF SENATOR JIM SASSER

Good morning.

I would like to commend the Chairman of our subcommittee, Senator Durenberger, for holding these hearings, today. This marks the last day of hearings for our deliberation on two pieces of significant grant reform legislation: S. 45, the Federal Assistance Reform Act of 1981, and S. 807, the Federal Assistance Improvement Act of 1981.

Now grant reform legislation is not the stuff that headlines are made of. But I would contend that this is very significant legislation nonetheless, especially during these times of fiscal austerity.

Before President Reagan took office, we were projected to have a nearly $100 billion grants-in-aid system for State and local governments in this country. Now with the action already taken in the Senate, the projected grants-in-aid outlays for 1982 may be as low as $85 billion. With such significant cutbacks in Federal aid, it is imperative that we pass grant reform legislation that will provide state and local officials with more flexibility in the way they administer Federal aid programs.

Both pieces of legislation before the subcommittee today offer us that promise. They would permit us to act more expeditiously on grant consolidation proposals that could streamline our more than 500 separate aid programs. They would permit us to simplify grant audit procedures and thereby end repetitive and often duplicative audits of State and local grant programs, and perhaps most important of all S. 45 and S. 807 would permit a major revamping of the massive amount of grant regulations that now hamper effective administration of our grants-in-aid system.

It would be my hope that in accomplishing this modernization of our grants-in-aid system we could significantly reduce the overhead costs of our grant system and get more bang for the buck in our Federal aid programs. Indeed, past GAO studies of Federal aid programs have indicated that some have administrative costs as high as 27 percent of program expenditures. These types of Federal assistance programs are clearly not the ones that the American people desire, and if S. 45 and S. 807 can help curtail or eliminate such excessive administrative costs, we should take immediate steps to pass this legislation.

Mr. Chairman, this subcommittee has always been in the vanguard of the grant reform movement. We labored long and hard on this subject in the last Congress, unanimously passed a grant reform bill modeled along the lines of S. 45 in committee. We also saw this legislation pass in the Senate in December, 1980. Virtually every member of the committee had some hand in working on and perfecting the grant reform legislation we now have before us.

By your expeditious action in concluding these hearings and getting us ready to mark up S. 45 and S. 807, Mr. Chairman, you deserve our commendation in readying this legislation for timely passage by the Committee on Governmental Affairs and the United States Senate.

Senator DURENBERGER. Our first witness today is Mr. William J. Anderson, director of the General Government Division of the General Accounting Office. I understand you are here to address the various provisions of both S. 45 and S. 807. You are very welcome to proceed.

TESTIMONY OF WILLIAM J. ANDERSON, DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY BILL THURMAN, ASSOCIATE DIRECTOR; LARRY ENDY, GROUP DIRECTOR; AND PAUL POSNER, SENIOR EVALUATOR, ALL OF THE GENERAL GOVERNMENT DIVISION, GAO

Mr. ANDERSON. Thank you very much, Mr. Chairman. Good morning. I would like to introduce the people at the table with me here. To my right is Bill Thurman, I am sure well known to you and the staff, GAO's man in the intergovernmental area. To my left is group director Larry Endy who reports to Bill; and to Bill's right is Paul Posner, again one of our stalwarts in the intergovernmental area. I would like to request that my full statement be entered in the record and I will summarize it.

Senator DURENBERGER. It will be entered into the record at the conclusion of your testimony.

Mr. ANDERSON. Mr. Chairman, we are pleased to be here this morning to present our views on Senate bill 45, the Federal Assistance Reform Act of 1981 and Senate bill 807, the Federal Assistance Improvement Act of 1981. Both bills would achieve significant and much-needed reform in our intergovernmental system.

Both bills include innovative approaches to managing Federal assistance that offer much promise for resolving pressing intergovernmental problems. The management problems plaguing our assistance system have been extensively documented by innumerable studies by GAO, ACIR, and others.

As fiscal austerity has become the watchword at all three levels of Government, the structure of Federal assistance and its impact on State and local finances, management, and, ultimately on program performance and priorities have become more intensely scrutinized. As reductions in Federal grants match the concurrent tax and spending cuts from other source revenues faced by State and local governments in recent years, it becomes more imperative that State and local officials be given flexibility to allocate and manage these diminishing resources. Thus, I believe that congressional passage of a grant reform bill is urgently needed. Grant consolidation, auditing simplification, standardization of crosscutting requirements, joint funding, and integrated assistance will all enable public sector officials to target and manage resources more effectively.

Now I will address the individual titles briefly. Title I of both bills would establish a process to encourage the development and passage of grant consolidation proposals.

It has been our longstanding position at GAO that the consolidation of fragmented and restrictive categorical grants into broader-purpose programs is fundamental to improving the administration of Federal assistance as well as enhancing the process of Government itself.

We believe that title I of S. 807 would make improvements over its predecessor, S. 878, by providing more flexibility to the President to define the scope and conditions of grant consolidation proposals. Undue constraints could limit the usefulness and relevance of the consolidation process as a mechanism to resolve significant problems in assistance management.

S. 807 would not limit the terms and conditions of consolidation plans to those currently operative in one or more of the assistance programs included. Consolidated programs may call for different kinds of Federal controls and non-Federal discretion than may be appropriate for a categorical grant. For example, while matching requirements might be appropriate for categorical programs intended to stimulate new State and local efforts in specific programs, they may not be appropriate for broader purpose grants that may be oriented toward supporting State and local priorities.

S. 807 also would require that the purposes and goals of the programs being consolidated be included in the consolidation plan. This provision would seem to provide sufficient flexibility to design consolidated programs to better target scarce resources to more limited populations or areas. S. 45, on the other hand, would require consolidated grants to maintain the eligibility of groups or individuals who are eligible under the programs being consolidated. This provision could potentially establish the principle, possibly enforceable through the courts, that those who were once eligible are forever eligible.

Both bills limit the consolidation process to those programs which are functionally related. While this is a reasonable and necessary condition, restricting the definition of functional area to the categories defined in the budget, as proposed by S. 807, could unnecessarily limit the range and scope of consolidation proposals. For example, consolidation of programs for maternal and child health could be limited because the Department of Health and Human Services' maternal and child health services programs fall into a different budget functional category than the closely related, special supplemental food program for women, infants, and children which is administered by the Agriculture Department. For this reason, the definition of functionally related programs as proposed in S. 45 appears preferable.

Next, title II, financial management and audit. GAO has testified and reported several times on the problems associated with grant auditing. Our report titled "Grant Auditing: A Maze of Inconsistency, Gaps, and Duplication That Needs Overhauling," pointed out the need for a single audit of grant recipients on a Governmentwide basis.

In the past, a Federal agency usually concerned itself with its own grants, although these grants may have made up only a small part of a grant recipient's operations. When the Federal agency performed or hired another auditor to perform an audit, usually only one grant out of a number that the recipient might have was audited, even though the recipient's other grants may have been much larger. When the auditors found practices that badly affected the grant they were auditing, they did not ordinarily determine how these practices may have affected the other grants of the recipient.

This approach to grant auditing costs time and money. Unnecessary costs result from duplication of effort and from performing audits too often on grants too small to warrant more than an occasional audit. In addition, the audit focus is often too narrow to be effective in preventing unauthorized expenditures and the loss of public funds. In our report, we noted that the Government can lose millions of dollars through gaps in audit coverage.

The basic recommendation has been the need for a single audit of all grants that an entity has. Such an audit, among other things, would test the grantee's system for complying with Federal restrictions on the use of the funds and related matters, but a detailed audit of each grant would not be made. A Federal auditor could review such an audit and rely on it if the single audit had been properly performed.

Progress has been made in solving this problem. OMB issued on October 22, 1979, a revision to circular A-102—attachment P—which requires the single audit and the use of a single audit guide. GAO, in cooperation with the Intergovernmental Audit Forum and various Federal agencies, took the lead in developing an audit guide—"Guidelines for Financial and Compliance Audits of Federally Assisted Programs"—for comprehensive financial and compliance audits of multifunded grant recipients. State and local auditors, as well as Federal auditors, participated in the development of this guide. Use of the guide, which was issued jointly by OMB and GAO in February 1980, is now required by circular A-102.

Although progress has been made, much remains to be done before the single audit can be fully implemented. We, therefore, fully support legislation to help implement the single audit concept. I might add that we are pleased to see the requirement in the proposed bills that the audits be made in accordance with the audit standards issued by the Comptroller General of the United States which, in part, require that audits be made by independent and qualified public accountants and Government auditors. The highest type of skills are needed to audit and render opinions on Government financial statements.

Next I will turn to title III of S. 807 and title IV of S. 45 regarding generally applicable Federal assistance requirements.

In recent years, an increasing number of general Federal policy and administrative requirements have been attached to Federal assistance programs. These requirements—covering such areas as equal employment opportunity, citizen participation, and equal delivery of program benefits—are commonly referred to as crosscutting requirements. Applicability of the requirements varies widely both in scope and coverage. There are also substantive differences in the requirements and variations in the methods used to implement them. There is a wide consensus that the differing requirements and practices result in confusion, duplication of effort, and added administrative costs.

The concept of standardization, along with the designation of a lead Federal agency to implement policy or administrative objectives, is very much in keeping with the past and current reform efforts of both the executive and legislative branches. We at GAO have been generally supportive of such efforts and believe that these titles are a step in the right direction.

Once national policy assistance standards are issued, there will almost certainly be substantive compliance disagreements between grantees, the grantor agency, the designated agency, and whatever agency—presumably OMB—that is responsible for coordinating overall implementation. Under section 705 of both bills, for example, the grantor agency is authorized to certify State and local compliance. It is very important that grantees not be placed in the position of being advised that they are in compliance, only to be informed later that the certification had been withdrawn because the designated agency disagrees with the grantor agency. Close coordination among the agencies, in the manner apparently envisioned by the bills, could prevent these situations from occurring.

As is the case with most reform measures, the success of these titles will depend, in a large measure, on the manner in which the executive branch implements the broad authorization and directives contained in the legislation. We might point out that in November 1980 OMB issued, for comment, a proposed circular designating agencies with responsibility for providing guidance on Governmentwide policies and administrative requirements. Considering the obvious management challenges posed by this OMB initiative, legislative support for this process would be very desirable.

Next we will talk about the provisions relating to joint funding, title III in S. 45 and title IV in S. 807. Titles III and IV of both bills amend the Joint Funding Simplification Act of 1974 which was recently extended for another 5-year period. We support joint funding as a viable process for simplifying and improving the Federal assistance system.

Both bills would help strengthen joint funding by mandating that Federal grantor agencies more seriously consider the joint funding process. S. 45 would also provide a stronger role for OMB.

We believe these features are desirable and necessary. As pointed out in our 1979 report on the act, the implementation of the Joint Funding Simplification Act had been a disappointment. OMB needs to assume a strong and positive leadership role in the joint funding program.

Neither bill, however, would address the problem we noted in another report regarding section 8(e) of the Joint Funding Simplification Act which deals with the establishment of a single non-Federal matching share. As discussed in our 1976 report, the integrity of individual programs and appropriations can be affected when a grantee is allowed to provide and account for non-Federal matching funds on an aggregate, rather than on an individual, program basis. Section 5 of the act limits the authorities described in section 8(e) by requiring that all statutory program requirements, in this case specific matching shares, be met. Therefore, in view of the limitation contained in section 5, it is our opinion that non-Federal matching shares must be established and accounted for on an individual rather than an aggregate basis.

Our report contains language that the subcommittee may wish to use in amending section 8(e) to correct this situation. Suggested language is provided for insuring that specific amounts according to individual programs and appropriations will be provided by grantees or, alternatively, permitting the establishment of, and accounting for, a single non-Federal share notwithstanding the provisions of section 5.

Next I will turn to a title that was peculiar to S. 807 on integrated assistance, title V. The integrated assistance approach proposed in S. 807 represents a promising and innovative way to give grantees more flexibility and discretion in allocating Federal assistance to more effectively respond to local problems and priorities. In one sense, integrated assistance could be viewed as a fallback or partial solution to the rigidities imposed by categorical grants for those areas where full consolidation has either failed or been deemed inappropriate. It would also help grantees adjust to budget cuts by enabling them to reprogram some Federal dollars away from lower priority programs to augment reduced Federal programs in higher priority areas.

Due to the innovative nature of this approach, we also believe some clarification is needed to guide Federal agency implementation. First, the applicability of this approach to assistance programs with different distribution schemes is unclear. While the approach appears to be workable for programs where funds are allocated to States based on a formula, we would anticipate considerable difficulty in applying the integrated funding concept to programs where funds are awarded on a discretionary, competitive basis. For example, it would not be likely that a grantee's application for discretionary assistance would survive a competitive review if the grantee intended to allocate 20 percent of the awarded funds away from the program.

A second issue concerns the applicability of eligibility requirements and mandates to reprogramed funds. Once reprogramed, we assume that funds lose the conditions of the old program and gain the conditions of the program to which they are transferred. Following this same logic, it would seem that the State or local matching shares would have to be increased if reprogramed Federal dollars are added by the grantee to a Federal program that requires a larger non-Federal match. We think it would be helpful if these issues were clarified.

Next, sir, we will address the miscellaneous provisions in title V of S. 45 and in title VI of S. 807. We support the overall objectives of the provisions in each of these titles. They would go a long way in implementing recommendations we have made in recent years to address problems plaguing our Federal assistance system. With certain modifications, we recommend that the subcommittee favorably consider the provisions in each title in reporting a bill.

Regarding the provisions relating to State oversight, we believe the language in S. 807 is consistent with the recommendation in our report to the Congress entitled "Federal Assistance System Should Be Changed To Permit Greater Involvement By State Legislatures." In that report, we found that grant provisions delegating responsibilities to the State executive branch had been interpreted, in some cases, by Federal and State officials as proscribing a role for State legislatures in overseeing Federal programs. We feel that the language in S. 807 would clearly express congressional intent that the Federal grant programs should remain neutral with regard to internal State separation of powers distinctions.

The standard maintenance of effort requirement proposed in S. 807 would basically address the problems identified in our recent report concerning out-of-date base years for determining the effort to be maintained by grantees and the lack of waiver authority to address fiscal hardship situations. However, in view of the important Federal interest served by maintenance of effort requirements, we feel that their across-the-board repeal, mandated in section 205 of S. 807, may be inappropriate. While we agree that existing maintenance of effort provisions need to be reexamined, we feel that a more selective and deliberate approach would be preferable.

Although maintenance of effort requirements should be standardized whenever they are used, the basic decision to include them might best be considered in the context of each program. For example, if the purpose of the program is to provide assistance for specific activities that supplement existing spending, then a maintenance of effort requirement may be an essential feature. However, if programs are oriented toward subsidizing existing State and local services, a maintenance of effort provision may not be appropriate.

We agree with the standard criteria proposed in the bill for a maintenance of effort requirement. To ease the impact of reduced Federal grant outlays, we would suggest that the criteria be expanded to permit grantee reductions in their own spending proportionate to reductions in Federal grant awards.

I would like to emphasize our support for the pilot study on administrative costs required by S. 45.

In a 1978 report, we recommended that OMB lead a Governmentwide effort to accumulate, analyze, and disseminate data on administrative costs involved with Federal assistance programs. As the Federal Government moves to block grants, a central system assessing comparative administrative costs among Federal programs is even more essential to permit an evaluation of their administrative efficiency and effectiveness.

Finally, we also feel that a pilot program to encourage the use of productivity incentives in Federal assistance could be an integral step in promoting better use of dwindling Federal resources.

In a 1978 report, we noted that Federal assistance programs may discourage grantee productivity improvements. A pilot program guided by OMB could help promote more widespread use of incentives by working with agencies to develop productivity measures of grantee performance and testing various program funding schemes to incorporate these measures. In this way, we believe that the considerable expertise and management talents of State and local governments could become more fully engaged in our effort to promote greater efficiency and reduce waste in Federal programs.

Mr. Chairman, I believe that both bills being considered here would fundamentally improve our Federal assistance system and serve to strengthen our system of federalism. We are anxious to continue to work with the subcommittee to provide whatever assistance we can on this important legislative initiative. In addition to the suggestions included in my statement, we have some technical comments and several suggested refinements on other provisions of the bills that we would be glad to share with the subcommittee staff.

That concludes my statement, Mr. Chairman.

We will be glad to respond to your questions.

Senator **Durenberger**. Thank you very much, Bill. I appreciate the shortness of the summary, as well as the thoroughness of the original statement and all of the backup material.

You stated that eligibility protections under the consolidation title in S. 45 prevents flexibility in the design of consolidation programs. Would you tell us how such flexibility might be preserved and, at the same time, offer some protection to people who are eligible for benefits under the program?

Mr. **Anderson**. I believe we consider that the language of S. 807 accomplishes that, sir, by providing that the goals and objectives of the programs being consolidated must be incorporated into the consolidation plan itself.

On the other hand, it does not require, as does S. 45, that the eligibility of a program participant must be protected. I would say that especially to the extent that funding reductions accompany consolidation proposals, provisions like this in S. 807 would probably be necessary to maintain some evenness, some rationality to the program.

Senator **Durenberger**. Your preference is for the definition of "functionally related" as contained in S. 45. Do you think that guidelines should be placed on the President's authority to prepare consolidation plans?

Mr. **Anderson**. Bill?

Mr. **Thurman**. I suspect that one way the subcommittee could move to avoid unnecessarily tying the President's hands—because we are worried that, in some cases, programs do not fit that neatly into the budget functional categories; yet it then would be desirable to include in consolidation proposals—would be to include, in a subcommittee report, language which would point out that generally the expectation would be that the programs would fall within the same budget functional category, but, in the event of a clear demonstration of closely interrelated programs, that condition would not be binding. If this were accomplished through subcommittee report language, then the statutory language in S. 45 should be acceptable.

Senator **Durenberger**. So, I interpret the testimony to be that "functionally related" is more realistic. To the extent that you try to put into the law any specific definitions of "function," you are putting a timeframe, in effect, around those functions which may handicap a President?

Mr. **Thurman**. Yes, sir.

I don't think we view this handicap as being all that critical. I think generally the budget functional categories do capture functionally related programs. There are a few cases that one can point to where it could conceivably cause difficulty, assuming that the President decided to propose consolidation of those particular programs.

Senator **Durenberger**. In the audit section of S. 807, there is a requirement for both "financial and compliance audits" to be prepared every 2 years. Would you explain, briefly, what a "compliance audit" is?

Mr. **Anderson**. As opposed to examining the books of record themselves for tracing through the expenditures, testing income, compliance would be concerned with the crosscutting requirements, or the other requirements, of a grant of a nonfinancial nature that are applicable to the grantee.

Senator **Durenberger**. State and local auditors are also required to complete these audits. In your opinion, do they have the resources available to them that are necessary to do the compliance audits which you have described?

Mr. **Anderson**. I think that is a real mixed bag across the country. I think as a general statement, probably not, sir, no.

I would say that they probably are sorely tasked to accomplish their present duties. There are some States like New York, for example and others, which certainly have the capability. I think that Federal auditors, in deciding when to look behind the work of these other auditors, would have to consider the question of whether adequate resources were available.

Senator **Durenberger**. What is your position on the issue of mandating compliance audits?

Mr. **Anderson**. I think that compliance audits are necessary, and I think it is a question of the roles played by the various auditors who are concerned with the programs. This may be independent auditors, private sector auditors, State auditors, local auditors, or Federal auditors. But I think that it is important for Government to insure compliance with the provisions of the grants.

Mr. **Thurman**. Perhaps a bit of an amplification on that, Mr. Chairman.

While public sector auditors—for example, State auditors in particular States—may not have the capacity to carry out fully all the requirements anticipated in the legislation, there is, of course, the option that the work be contracted out to independent public accountants.

In our view, there is sufficient capacity within the entire public and private sector audit community to carry out the requirements of the legislation.

Senator **Durenberger**. That seems to be true of the more common audit which you mentioned—which is expenses and disbursements.

Mr. **Thurman**. Yes.

Senator **Durenberger**. My question is concerning compliance audits. When it is described in terms of complying with crosscutting requirements, is there a capability outside the Federal system?

Mr. **Anderson**. I would say that the revenue sharing experience provides some insight into that, sir. Most of the audits are being done by external private auditing firms. The Office of Revenue Sharing does track very closely the performance on those audits. Again, it is a mixed bag, but, in fact, there have been a number of effective audits that have addressed the compliance aspects of the revenue sharing grants.

Senator **Durenberger**. Let me ask a question regarding the reimbursement of independent auditors. We have several opinions from various Federal agencies about reimbursements.

Do you have any preference for direct or indirect reimbursement of these auditors?

Mr. **Anderson**. We have an institutional position. I will let Bill express that.

Mr. **Thurman**. This is an issue, as you correctly pointed out, where there are various views.

Under OMB Circular A-87 there is certainly a potential for capturing, through the grantee's indirect cost recovery rate, the cost associated with carrying out the audit function. That, I think, conceptually, would probably be the preferable approach.

The difficulty that one encounters—and this issue is still being considered—is making sure that the funds that are recouped through the indirect cost recovery rate do, in fact, find their way to financing the audit.

It is my understanding that there has been at least one innovative approach to this problem. I believe it is in the State of Kansas where funds are being automatically set-aside out of individual grant programs and funneled to the audit function to assure that the audits are, in fact, conducted.

Through the indirect cost recovery rate approach, the audit function would assume the same status for cost recovery purposes—as a general counsel operation or as a procurement operation—as being one of the vital administrative processes that needs to be carried out. Conceptually, I think it would be my personal preference to follow that approach.

Senator **Durenberger**. Do you have a recommendation as to how direct reimbursement should work?

Mr. **Thurman**. Not to my knowledge, Mr. Chairman. We may have come up with a position somewhere within the institution. If so, we will get it to you.

Senator **Durenberger**. OK. One of the distinctions of the bill, undoubtedly, has some relativity to its authors. In a bill authored by the Senator from Tennessee TVA is excluded from the purview of the audit title, on the basis that it does not administer Federal assistance programs as defined in the bill.

Do you have an opinion as to whether or not TVA should be excluded from the audit requirements on the basis articulated by the bill?

Mr. **Anderson**. I don't have a view on it, sir.

Mr. **Thurman**. No, sir. I do not, either.

Senator **Durenberger**. You don't have an opinion, or——

Mr. **Anderson**. I know that GAO, for years, has been performing an annual audit down at TVA with its own people, rendering an opinion on the financial statements and looking at all aspects of its operations. I just—I can't speak to whether the bill should apply to it.

Senator **Durenberger**. All right.

On the issue of national policy assistance standards and the applicability of Federal assistance requirements, do you think that an interagency task force is necessary to insure proper coordination of the standards?

Mr. **Anderson**. Are you talking about the crosscutting requirements, sir; in coming to grips with the crosscutting requirements?

Senator **Durenberger**. Yes, in the Federal assistance area.

Mr. **Anderson**. Right. I would say that, because of the fact that all of the agencies are involved with the requirements, I think there is a need for each of them individually to have a very good understanding of the requirements developed by the designated agency—that agency charged with developing Government-wide guidance with respect to a particular crosscutting requirement—to eliminate or at least keep to a minimum the deviations in an individual agency's administration of the crosscutting requirements.

Senator **Durenberger**. S. 807 contains a provision that excess amounts applicable to expired appropriations will be lapsed and returned to the Treasury. Do you have an opinion on the appropriateness of that provision?

Mr. **Anderson**. Just that it seems to be consistent with regular Federal practice.

Senator **Durenberger**. You also stated in your remarks that the range of programs which could be included in an integrated program plan should be broadened from the single budget function category. Would you recommend that the boundaries be defined by the definition of "functionally related" as contained in S. 45?

Mr. **Anderson**. That would be an improvement, sir.

Senator **Durenberger**. It's possible for us to include all, or parts, of the various titles in this bill if we could drop some and rely on a particular executive to fill the gap. With regard to titles II and III, in particular, do you think it's important that both of these be included in legislation and not left to particular chief executives to determine the guidelines and the direction in which to move?

Mr. **Anderson**. I would say very definitely, sir, in view of the history that these problems have had. The problems, that the legislation is trying to address, have persisted for all these many years, despite high-level attention and much reporting on the problems.

Senator **Durenberger**. Is it your opinion that it is very important to include that in the legislation?

Mr. **Anderson**. Yes, sir.

Senator **Durenberger**. Can you think of any advantage to not having it spelled out in legislation? Might we find a particular chief executive doing a better job in these areas if his hands weren't tied by some specific piece of legislation?

Mr. **Anderson**. Well, it hasn't happened to date, sir. As I said, the problems have been around for a long time. I guess my own confidence level would come up; some action finally might be taken if it were included in the law.

Senator **Durenberger**. Thank you very much for your testimony.

Mr. **Anderson**. Thank you, sir.

[The prepared statement of Mr. Anderson follows:]

Prepared Statement of William J. Anderson

Mr. Chairman, we are pleased to be here this morning to present our views on Senate bill 45, the "Federal Assistance Reform Act of 1981," and Senate bill 807, the "Federal Assistance Improvement Act of 1981." Both bills would achieve significant and much-needed reform in our intergovernmental system.

Both bills include innovative approaches to managing Federal assistance that offer much promise for resolving pressing intergovernmental problems. The management problems plaguing our assistance system have been extensively documented by innumerable studies by GAO, ACIR, and others.

Collectively, the narrow boundaries of Federal categorical programs and the estimated 1,200 plus mandates accompanying them have placed major strains on the accountability and administrative capacities of all three levels of government.

Today, practically every major State and local service is affected by the Federal fiscal and regulatory presence. This increasing interdependence of all three levels of government in the delivery of public services means that the Federal level cannot afford to ignore the impact of Federal policies on the ability of State and local governments to effectively manage Federal and non-Federal resources alike.

As fiscal austerity has become the watchword at all three levels of government, the structure of Federal assistance and its impacts on State and local finances, management, and, ultimately on program performance and priorities have become more intensely scrutinized. As reductions in Federal grants match the concurrent tax and spending cuts from own source revenues faced by State and local governments in recent years, it becomes more imperative that State and local officials be given flexibility to allocate and manage these diminishing resources. Thus, I believe that Congressional passage of a grant reform bill is urgently needed. Grant consolidation, auditing simplifications, standardization of crosscutting requirements, joint funding, and integrated assistance will all enable public sector officials to target and manage resources more effectively.

TITLE I—GRANT CONSOLIDATION

Title I of both bills would establish a process to encourage the development and passage of grant consolidation proposals.

It has been our long-standing position at GAO that the consolidation of fragmented and restrictive categorical grants into broader-purpose programs is fundamental to improving the administration of Federal assistance as well as enhancing the process of government itself.

In our 1975 report, "Fundamental Changes Are Needed in Federal Assistance To State And Local Governments," we concluded that the categorical grant system fosters an unwieldy and fragmented system for delivering public services. Further, categorical grants are often too restrictive to meet actual service needs at the State and local level and the burden of mounting a coordinated effort to deliver federally assisted services falls on the grantee. This causes management problems at the State and local level as grantees attempt to reconcile grant programs with separate and, at times, conflicting standards and requirements. Over the years, GAO has issued a number of reports which have recommended consolidation initiatives in specific program areas.

We believe that Title I of each bill provides an effective and practical long-term means for progress on the consolidation front. Although the Administration's block grant proposals could achieve far-reaching legislative consolidation in a number of areas, the process contemplated in Title I would provide a more long-term institutionalized process to encourage consolidation proposals.

We believe that Title I of S. 807 would make improvements over its predecessor, S. 878, by providing more flexibility to the President to define the scope and conditions of grant consolidation proposals. Undue constraints could limit the usefulness and relevance of the consolidation process as a mechanism to resolve significant problems in assistance management.

S. 807 would not limit the terms and conditions of consolidation plans to those currently operative in one or more of the assistance programs included. Consolidated programs may call for different kinds of Federal controls and non-Federal discretion than may be appropriate for a categorical grant. For example, while matching requirements might be appropriate for categorical programs intended to stimulate new State and local efforts in specific programs, they may not be appropriate for broader purpose grants that may be oriented towards supporting State and local priorities.

S. 807 also would require that the purpose and goals of the programs being consolidated be included in the consolidation plan. This provision would seem to provide sufficient flexibility to design consolidated programs to better target scarce resources to more limited populations or areas. S. 45, on the other hand, would require consolidated grants to maintain the eligiblity of groups or individuals who are eligible under the program being consolidated. This provision could potentially establish the principle, possibly enforceable through the courts, that those who were once eligible are forever eligible.

Both bills limit the consolidation process to those programs which are functionally related. While this is a reasonable and necessary condition, restricting the definition of functional area to the categories defined in the Budget, as proposed by 807, could unnecessarily limit the range and scope of consolidation proposals. For example, a full consolidation of Federal job training assistance would be constrained because the Department of Labor's employment and training programs fall in a different budget functional category than the Department of Education's vocational education programs. For this reason, the definition of functionally related programs proposed in S. 45 appears preferable.

Whenever significant change is made to a large system, issues surrounding the transition from the old to the new inevitably arise. We feel that additional clarification may be needed to help guide the transition. For example, would ongoing grants awarded under the categorical programs continue to operate according to the old terms and conditions through the remainder of the grant performance period, or would they be controlled immediately by the revised requirements of the consolidated grant? The expiration provisions of both bills also need the Subcommittee's attention. For example, if the consolidated program expires before the expiration dates in the authorizing legislation of the categorical programs, would the categorical programs automatically revert back to their previous status or would Congressional action reauthorizing the programs be required? Guidance on these types of questions would be desirable.

TITLE II—FINANCIAL MANAGEMENT AND AUDIT

GAO has testified and reported several times on the problems associated with grant auditing. Our report titled "Grant Auditing: A Maze of Inconsistency, Gaps, and Duplication That Needs Overhauling," pointed out the need for a single audit of grant recipients on a government-wide basis.

In the past, a Federal agency usually concerned itself with its own grants, although these grants may have made up only a small part of a grant recipient's operations. When the Federal agency performed or hired another auditor to perform an audit, usually only one grant out of a number that the recipient might have was audited, even though the recipient's other grants may have been much larger. When the auditors found practices that badly affected the grant they were auditing, they did not ordinarily determine how these practices may have affected the other grants of the recipient. The other grants may not have been audited. Further, the audit would usually include some tests of the grantee's procedures for handling all of its cash receipts and disbursements, such as computing and allocating payroll costs. If another Federal auditor visited the same grantee, he would probably perform some of these same procedures over again.

This approach to grant auditing costs time and money. Unnecessary costs result from duplication of effort and from performing audits too often on grants too small to warrant more than an occasional audit. In addition, the audit focus is often too narrow to be effective in preventing unauthorized expenditures and the loss of public funds. In our report, we noted that the Government can lose millions of dollars through gaps in audit coverage.

The basic recommendation has been the need for a single audit of all grants that an entity has. Such an audit, among other things, would test the grantee's system for complying with Federal restrictions on the use of the funds and related matters, but a detailed audit of each grant would not be made. Any Federal auditor could review such an audit and rely on it if the single audit had been properly performed.

Progress has been made in solving this problem. OMB issued on October 22, 1979, a revision to Circular A-102 (attachment P) which requires the single audit and the use of a single audit guide. GAO, in cooperation with the Intergovernmental Audit Forum and various Federal agencies, took the lead in developing an audit guide—"Guidelines for Financial and Compliance Audits of Federally Assisted Programs"—for comprehensive financial and compliance audits of multifunded grant recipients. State and local auditors as well as Federal auditors participated in the development of this guide. Use of the guide, which was issued jointly by OMB and GAO in February 1980, is now required by Circular A-102.

Another significant effort is the work of a special single audit steering committee. The committee was organized in the latter part of 1980. The purposes of the committee are to look into implementing problems of the single audit approach, to make recommendations to resolve them and to provide general assistance in the implementation of the single audit approach. The committee is under the sponsorship of the Joint Financial Management Improvement Program and includes representatives from Federal, State, and local audit organizations. Specifically, the committee includes three inspectors general, two State auditors, two local auditors, and one JFMIP representative.

The committee's current efforts deal with the following problems or issues:

Inconsistencies in the principal documents affecting the single audit performance.

Reimbursement policies and practices under single audits.

Compatible Federal, State, and local government single audit criteria and approach.

Minority and small CPA firm participation in single audits.

Implementation of the cognizance responsibilities under OMB Circular A-102, attachment P.

Other progress has also been made in improving audits of Federal grants. For example, the Intergovernmental Audit Forum has projects underway to improve such areas as audit planning and coordination. Also, the American Institute of Certified Public Accountants has established a committee to identify substandard audit work with regard to Federal grants.

Although progress has been made, much remains to be done before the single audit can be fully implemented. We, therefore, fully support legislation to help implement the single audit concept. I might add that we are pleased to see the requirement in the proposed bills that the audits be made in accordance with the audit standards issued by the Comptroller General of the United States which, in part, require audits be made by independent and qualified public accountants and government auditors. The highest type of skills are needed to audit and render opinions on Government financial statements.

TITLE III—S. 807 AND TITLE IV—S. 45; GENERALLY APPLICABLE FEDERAL ASSISTANCE REQUIREMENTS

In recent years, an increasing number of general Federal policy and administrative requirements have been attached to Federal assistance programs. These requirements—covering such areas as equal employment opportunity, citizen participation, and equal delivery of program benefits—are commonly referred to as crosscutting requirements. Applicability of the requirements varies widely both in scope and coverage. There are also substantive differences in the requirements, and variations in the methods used to implement them. There is a wide consensus that the differing requirements and practices result in confusion, duplication of effort, and added administrative costs.

To address these problems, both bills instruct the President to designate a single Federal agency to establish crosscutting standards applicable to Federal assistance programs. While the bills would require each agency administering a Federal assistance program to secure compliance with the standards, they would also empower the administering Federal agency to accept a certification by any affected State or local government that its performance is in compliance with State and local laws, regulations, directives, and standards that are at least equivalent to those required by the standard regulations. The bills recognize that in some instances designated agencies may not be able to develop standard rules because of conflicting or inconsistent provisions of law, and make provision for introduction of legislation removing such impediments in appropriate circumstances.

The concept of standardization, along with the designation of a lead Federal agency to implement policy or administrative objectives, is very much in keeping with past and current reform efforts of both the executive and legislative branches. We in GAO have been generally supportive of such efforts and believe that these titles are a step in the right direction.

With a broad reform such as is contemplated by these titles, it is impossible to forecast with any degree of precision the manner in which the reform will be implemented. Whether standardization will produce simplification is a complex question. If the standard regulations were generally more stringent than many of the existing requirements, standardization could lead to complications or additional work for the grantee.

Standardization also may not always be appropriate or possible. For example, the process of developing citizen participation requirements for programs as diverse as the general revenue sharing program and programs such as those for alcohol treatment and community health centers will be a formidable undertaking. It may be that in the limited context of a particular regulation, standardization may not be desirable or legal, a point recognized by numerous sections of the legislation. It will be the responsibility of the grantor agency, the agency designated to issue crosscutting regulations, and OMB to ensure optimum coordination in these and other situations.

Once national policy assistance standards are issued, there will almost certainly be substantive compliance disagreements between grantees, the assistance agency, the designated agency, and whatever agency, presumably OMB, that is responsible for coordinating overall implementation. Under section 705 of both bills, for example, the grantor agency is authorized to certify State and local compliance. It is very important that grantees not be placed in the position of being advised that they are in compliance, only to be informed later that the certification has been withdrawn because the designated agency disagrees with the grantor agency. Close coordination among the agencies in the manner apparently envisioned by the bills could help prevent these situations from occurring.

Effective coordination among the agencies will also be essential to eliminate the possibility of a compliance certification being issued by one grantor agency while other grantor agencies are questioning the grantee's compliance with the same standards. With problems such as these, section 707 of S. 807 directs the President to provide for the establishment of dispute solving procedures.

As is the case with most reform measures, the success of these titles will depend, in large measure, on the manner in which the executive branch implements the broad authorization and directives contained in the legislation. We might point out that in November 1980 OMB issued for comment a proposed circular designating agencies with responsibility for providing "guidance" on Government-wide policies and administrative requirements. Considering the obvious management challenges posed by this OMB initiative, the legislative support for this process would be very desirable.

TITLE III—S. 45 AND TITLE IV—S. 807; JOINT FUNDING

Titles III and IV of both bills amend the Joint Funding Simplification Act of 1974 which was recently extended for another 5-year period. We support joint funding as a viable process for simplifying and improving the Federal assistance system.

Both bills would help strengthen joint funding by mandating that Federal grantor agencies more seriously consider the joint funding process. S. 45 will also provide a stronger role for OMB, including—

training of Federal agency personnel,

developing criteria to guide Federal agencies in identifying programs suitable for integrated grant administration,

resolving conflicts between agencies in developing uniform provisions, and

resolving conflicts between agencies and recipients in developing and administering integrated grant programs.

We believe these features are desirable and necessary. As pointed out in our 1979 report,[1] the implementation of the Joint Funding Simplification Act had been a disappointment and OMB needed to assume a strong and positive leadership role in the joint funding program.

Neither bill, however, would address the problem we noted in another report regarding section 8(e) of the Joint Funding Simplification Act which deals with the establishment of a single non-Federal matching share. As discussed in our 1976 report to the Congress,[2] the integrity of individual programs and appropriations can be affected when a grantee is allowed to provide and account for non-Federal matching funds on an aggregate rather than on an individual program basis. Section 5 of the act limits the authorities described in section 8(e) by requiring that all statutory program requirements, in this case specific matching shares, be met. Therefore, in view of the limitation contained in section 5, it is our opinion that non-Federal matching shares must be established and accounted for on an individual rather than an aggregate basis.

Our report contains language that the Subcommittee may wish to use in amending section 8(e) to correct this situation. Suggested language is provided for insuring that specific amounts according to individual programs and appropriations will be provided by grantees or, alternatively, permitting the establishment of, and accounting for, a single non-Federal share notwithstanding the provisions of section 5.

TITLE V—S. 807; INTEGRATED ASSISTANCE

The integrated assistance approach proposed in S. 807 represents a promising and innovative way to give grantees more flexibility and discretion in allocating Federal assistance to more effectively respond to local problems and priorities. In one sense, integrated assistance could be viewed as a fallback or partial solution to the rigidities imposed by categorical grants for those areas where full consolidation has either failed or been deemed inappropriate. It would also help grantees adjust to budget cuts by enabling them to reprogram some Federal dollars away from lower priority programs to augment reduced Federal programs in higher priority areas.

In this regard, we would suggest that the range of covered programs which could be included in an integrated program plan be broadened. Restricting the range of potential grantee reallocations to programs within a budget functional category could constrain grantees from realizing the full discretion and coordinative benefits that this title offers. The definitional boundaries of Federal budget functional categories may not necessarily coincide with the actual ways that programs are combined at the State and local level to deliver services. The title already contains safeguards against abuses of the reprogramming authority, in that the assistance agency is empowered to approve or disapprove reprogramming proposals.

---

[1] "A Study of the Joint Funding Simplification Act," GGD-79-87, July 26, 1979.

[2] "The Integrated Grant Administration Program—An Experiment In Joint Funding," GGD-75-90, Jan. 19, 1976.

Due to the innovative nature of this approach, we also believe some clarification is needed to guide Federal agency implementation. First, the applicability of this approach to assistance programs with different distribution schemes is unclear. While the approach appears to be workable for programs where funds are allocated to States based on a formula, we would anticipate considerable difficulty applying the integrated funding concept to programs where funds are awarded on a discretionary, competitive basis. For example, it would not be likely that a grantee's application for discretionary assistance would survive a competitive review if the grantee intended to allocate 20 percent of the awarded funds away from the program.

A second issue concerns the applicability of eligibility requirements and mandates to reprogramed funds. Once reprogramed, we assume that funds lose the conditions of the old program and gain the conditions of the program to which they are transferred. Following this same logic, it would seem that the State or local matching share would have to be increased if reprogramed Federal dollars are added by the grantee to a Federal program that requires a larger non-Federal match. We think it would be helpful if these issues were clarified.

TITLE V—S. 45 AND TITLE VI—S. 807; MISCELLANEOUS

We support the overall objectives of the provisions in each of these titles. They would go a long way in implementing recommendations we have made in recent years to address problems plaguing our Federal assistance system. With certain modifications, we recommend that the Subcommittee favorably consider the provisions in each title in reporting out a bill.

Regarding the provisions relating to State oversight, we believe the language in S. 807 is consistent with the recommendation in our report to the Congress titled "Federal Assistance System Should Be Changed To Permit Greater Involvement By State Legislatures." In that report, we found that grant provisions delegating responsibilities to the State executive branch had been interpreted in some cases by Federal and State officials as proscribing a role for State legislatures in overseeing Federal programs. We feel that the language in S. 807 would clearly express Congressional intent that Federal grant programs should remain neutral with regard to internal State separation of powers distinctions.

The standard maintenance of effort requirement proposed in S. 807 would basically address the problems identified in our recent report[3] concerning out-of-date base years for determining the effort to be maintained by grantees and the lack of waiver authority to address fiscal hardship situations. However, in view of the important Federal interest served by maintenance of effort requirements, we feel that their across-the-board repeal (mandated in Section 205) may be inappropriate. While we agree that existing maintenance of effort provisions need to be re-examined, we feel that a more selective and deliberate approach would be preferable. Although maintenance of effort requirements should be standardized whenever they are used, the basic decision to include them might best be considered in the context of each program. For example, if the purpose of the program is to provide assistance for specific activities that supplement existing spending, then a maintenance of effort requirement may be an essential feature. However, if programs are oriented toward subsidizing existing State and local services, a maintenance of effort provision may not be appropriate.

Nevertheless, we feel that the intergovernmental perspective needs to be more fully reflected in the development of individual maintenance of effort requirements to promote greater sensitivity to the aggregate or cumulative burden that these provisions may impose on State and local governments. Therefore, in our report, we suggested that proposed legislation including maintenance of effort requirements be referred to a single point in each House, such as the Governmental Affairs Committee, for review and comment.

We agree with the standard criteria proposed in the bill for maintenance of effort. To ease the impact of reduced Federal grant outlays, we would suggest that the criteria be expanded to permit grantee reductions in their own spending proportionate to reductions in Federal grant awards.

I would like to emphasize our support for the pilot study on administrative costs required by S. 45. In a 1978 report, we recommended that OMB lead a Government-wide effort to accumulate, analyze, and disseminate data on administrative costs involved with Federal assistance programs.[4] As the Federal Government moves to block grants, a central system assessing comparative administrative costs among Federal programs is even more essential to permit an evaluation of their benefits.

---

[3] "Proposed Changes In Federal Matching And Maintenance Of Effort Requirements For State And Local Governments," GGD-81-7, Dec. 23, 1980.

Finally, we also feel that a pilot program to encourage the use of productivity incentives in Federal assistance could be an integral step in promoting better use of dwindling Federal resources. In a 1978 report,[5] we noted that Federal assistance programs may discourage grantee productivity improvements. Cost reductions achieved by grantees with Federal funds typically revert back to the Federal Government. Grantees that increase their costs, on the other hand, are rewarded by many Federal formulas which allocate funds based, in part, on grantee spending. A few Federal programs recognize and reward grantees for improved productivity by either providing for increased Federal funding shares or including comparative performance as a factor in allocation formulas. A pilot program guided by OMB could help promote more widespread use of incentives by working with agencies to develop productivity measures of grantee performance and testing various program funding schemes to incorporate these measures. In this way, we believe that the considerable expertise and management talents of State and local governments could become more fully engaged in our effort to promote greater efficiency and reduce waste in Federal programs.

Mr. Chairman, I believe that both bills being considered here would fundamentally improve our Federal assistance system and serve to strengthen our system of federalism. We are anxious to continue to work with the Subcommittee to provide whatever assistance we can on this important legislative initiative. In addition to the suggestions included in my statement, we have some technical comments and several suggested refinements on other provisions of the bills that we would be glad to share with the Subcommittee staff.

I would be happy to respond to any questions you might have.

Senator **Durenberger**. We will now hear from Mr. Edwin Harper from the Office of Management and Budget. Welcome, Ed. Ed is the Deputy Director of the Office of Management and Budget. He is here to present a statement on the two bills before us which are also of concern to OMB. Welcome to the hearing. It's a pleasure to have you here.

TESTIMONY OF EDWIN L. HARPER, ASSISTANT TO THE PRESIDENT AND DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, ACCOMPANIED BY HAROLD STEINBERG, ASSOCIATE DIRECTOR FOR MANAGEMENT, AND JAMES KELLY, DEPUTY ASSOCIATE DIRECTOR FOR INTERGOVERNMENTAL AFFAIRS AT OMB

Mr. **Harper**. Thank you very much, Mr. Chairman. It's a pleasure to be here this morning. I would like to introduce my colleagues. This is Mr. Hal Steinberg, who is our Associate Director for Management at the Office of Management and Budget. Hal comes to the Office of Management and Budget from a distinguished career with one of the big eight public accounting firms where his practice centered on public sector accounting.

I also have with me Mr. Jim Kelly, who is Deputy Associate Director for Intergovernmental Affairs at the Office of Management and Budget.

I have a written statement. If I may, I will submit that for the record and present a fairly brief summary of my views.

Senator **Durenberger**. Your statement will be made part of the record following your testimony.

Mr. **Harper**. Thank you. We are pleased to have the opportunity to discuss S. 45 and S. 807 and to support many of the key aspects of both of these bills. I think that we view these hearings as having great significance, because they do bring the management of Federal grant assistance to State and localities out of kind of the shadowy bayous of management and hopefully into the sunny mainstream of Federal concern.

---

[4] "The Federal Government Should But Doesn't Know The Costs of Administering Its Assistance Programs," GGD-77-87, Feb. 14, 1978.

[5] "State And Local Government Productivity Improvement: What Is The Federal Role?," GGD-78-104, Dec. 6, 1978.

The thrust of the subcommittee's concerns are wholly consistent with those of the President's initiatives to improve Federal assistance to State and local governments. As you may recall, in Dave Stockman's testimony before this subcommittee 2 months ago, he stated OMB's commitment to providing State and local governments with greater program resource and policy flexibility and we have begun. We have submitted two of our block grant proposals to the Congress. We feel these are important because they do eliminate unnecessary overhead at all levels of government—Federal, State, and local.

Also, they eliminate unnecessary Federal restrictions which prevent the targeting of funds to the real priorities of State and local governments. We have begun implementing the Paperwork Reduction Act to eliminate duplicate Federal agency requests for data in an attempt to minimize the reporting requirements of State and local governments.

The President has issued Executive Order 12291 on Federal regulations, which is designed to end the spiraling expansion in federally imposed mandates and orders. Also, I think, we have recruited an outstanding team on the management side of the Office of Management and Budget. We brought in people such as Hal with extensive financial management experience in the areas of Federal assistance to help guide and rejuvenate the program.

Some specific comments: I think both with respect to S. 45 and S. 807 that we are still looking for the right balance between an expression of legislative intent with a complementing level of detailed guidance and instruction. I guess, at the moment, our feeling is that there is probably still a little too much of a tilt toward specific implementing detail. With respect to title I, the consolidation of programs, we are very enthusiastic about this title. It goes back some years to recommendations coming from the ACIR. Of course, it provides for the expedited consideration by the Congress of consolidation proposals by the President.

We feel that there are several very essential aspects to this title which should be included in the final legislation. One is we feel it would be very unfortunate if there were a preemption of current or pending grant consolidation proposals by new legislation.

Second, the automatic discharge provision, we feel, is a major distinguishing characteristic of the legislative proposal in S. 807. That is not contained in S. 45. Of course, we would state, for the record, that it is our expectation that the President would have the ability to use the regular legislative process, as well as the grant consolidation process. This has been the case in administrative reorganization proposals where both routes have been employed.

There are several features in title I that we feel are desirable. We feel, for example, that it is useful to have both functional and recipient class criteria and that we be able to consolidate on either basis. This provides the maximum of flexibility. I think that one of the things, in hearing some of the dialog in the prior session, to be realized is that, whenever a President forwards a proposal to Congress, he recognizes the real world in terms of the legislative history of the program—what's involved in the program—and forwards a proposal which deals with enactment of the Congress. There are programs existing today where, in the future, it may be worthwhile to consolidate on either a functional basis or a recipient class basis.

Another desirable feature in title I would be to have the flexibility in adjusting entitlements, in particular. This consolidation feature does appear in S. 807. We would fully support that.

A third feature which causes a little bit of concern is the time period for submitting proposals. If that's limited to the first 60 days of a session—I think we can speak from experience—that would work a hardship on new administrations. We would ask for some flexibility with respect to the submitting of proposals in title I.

With respect to title II, financial management and audit of Federal assistance, we feel that the key provision is the single audit. This is a high priority of this administration.

I guess the key factor that we are looking for here is a clarification that any legislation to the contrary notwithstanding, the single audit approach may be implemented. Of course, the single audit approach is important, because in many current situations the grant-by-grant approach generates duplication and overlapping activity unnecessarily. I think there is a consensus in the Congress, the GAO and State and local governments that a streamlined approach is required.

Thus the Office of Management and Budget issued attachment P to its circular A-102. This requires State and local governments to use their own procedures to arrange for an independent audit of their operations—an audit every 2 years on an organizationwide basis, not just a grant-by-grant basis as required.

A key factor here is that the results of this audit can be relied upon by all Federal agencies. I think the apparent need for this legislation is based on whether or not we can implement this single audit concept administratively. Some Federal agencies, I believe, have expressed the feeling that they have other statutory requirements which limit their ability to accept the results of the single audit.

I think this type of legislation would give a clear signal that the Congress wants us to proceed in the direction of the single audit, that we have the statutory authority to do so, and that other Federal agencies have the statutory ability to accept the results of those single audits.

With respect to title III, especially S. 807, we are talking about the administration of generally applicable Federal assistance requirements. We agree with the basic concept, but I think that we need to look at the fundamentals that come behind the reality of problems that we see from day to day. In many cases the standards that we see in various programs are the result of the political process—the decisions of the Congress.

To the extent that this title addresses statutory requirements, I think ultimately the relief is going to have to come from Congress and specific legislation relating to those specific statutory requirements. I think that we can have the Office of Management and Budget charge off and try to do something about these. But, I think realistically in the end, statutorily imposed crosscutting requirements are going to have to be addressed by the Congress itself.

Other requirements which have been imposed or extended—and many have been extended administratively—we can and are doing something about. The President's Task Force on a Regulatory Relief has taken as one of its charges to review existing regulations, pending regulations and all proposals for new regulations; to comment on those and try to root out any unnecessary regulations we would find; thus kind of looking blind at the problems and trying to get at root causes and looking at what we are doing today. We feel that the detailed restrictive language of title III really doesn't get at the heart of the problem. It treats the symptoms and recognizes and focuses on those. We feel we need to go beyond that and take these other factors into consideration.

Title IV of S. 807 and title III of S. 45 relate to joint funding which was reauthorized late in the last session. We feel that the perfecting amendments in S. 807 are appropriate. We support those.

With respect to title V, integrated assistance, we feel that this proposal is consistent with giving State and local governments more flexibility.

The other miscellaneous titles, which are numerous and disparate in the two bills, I have covered in my statement. I will be happy to cover those in the questions and answers.

In conclusion, we are going to diligently pursue improved management of Federal assistance programs to States and localities. We are delighted about the support for block grants, which we find in both S. 45 and S. 807. Many of the other things in these bills we should and will do administratively. We can't do everything. We have set some priorities. Those priorities are the driving force for our agenda. The priorities are grant consolidation and the single audit.

Mr. Chairman, do you have any questions?

Senator **Durenberger.** Yes. I appreciate the statement and I appreciate your summary. I am feeling bad now about having scheduled this hearing during the Easter recess, because I wish a few more of my colleagues were here to hear your testimony. It suggests to me that this admininstration intends to accomplish a lot of the objectives which have been in the grant reform legislation before this Congress for a long time. It suggests to us that we not move too quickly on too much of the grant reform legislation lest we set the legislative process in the way of the efficiency of the administrative process. That clearly leaves us with some kind of a dilemma. I hear what you are saying. I think it's very realistic. Yet I am at the end of a process as I sit here chairing this subcommittee. Others before me have battled, as you have heard Bill Anderson from GAO say, to get administrations to move in this direction and in an effort to move legislation at least out of the Senate, if not out of the House. It would be rather difficult for us to stop this process, or to limit it substantially. I am going to ask you some questions which are aimed at finding out what it is you think can be accomplished without legislation, and to find out how you feel legislation might complicate your job.

One of the critical issues to resolve in the legislation is the criteria limiting the consolidation plans which the President can propose. The two bills we have before us approach this issue in different ways and are illustrative of the problems which you are articulating.

Let me ask you very simply: In you personal view, are functional limitations necessary in the consolidation process?

Mr. HARPER. Frankly, Mr. Chairman, I don't believe that functional limitations are necessary in the process. I am glad to see that the legislation proposed, or the two combined, would allow for both the recipient class and functional consolidations.

Senator DURENBERGER. Let me ask about the block grants which are under consideration. Some of the proposed block bills are before various committees. Others are not. I have looked at some of them. Would any of your proposed block grants be excluded from expedited treatment of the functionally related limitations of either S. 45 or S. 807?

Mr. HARPER. I am not sure that they would be. Frankly, in the history that we find of the legislation on the reorganization side, which in some ways is an analogy to grant consolidations——

Senator DURENBERGER. Could you pull you mike up? It might help me or somebody else.

Mr. HARPER. OK. In some of the legislative history we find on the reorganization side—which I think is a good analogy to title I with respect to grant consolidation—we found that, when too ambitious of a reorganization proposal is submitted, it runs into rough water. The reorganization authority, analogous to title I, is regarded as a housekeeping power that the Congress has recognized for the Executive, and thus has allowed the expedited procedure for.

If we get into more broad-ranging consolidations, the Congress has generally expressed its opinion one way or another that it wants to take a good, hard, careful look at what is being proposed. I suspect that, given the magnitude of the grant consolidations which the President has proposed, the relevant committees will want to take a good, hard look at it, as, indeed, some of them have promised they will do.

Senator DURENBERGER. Judging from my own experience of the blocking proposals, there may be some justification for your suggesting some flexibility between functionally related and beneficially related. I am assuming that is what you see in the beginning. I am thinking of health and social services blocks, which are unusual areas. I see an objection to the competition which is created when you put beneficiaries of different classes together in the same grant program. Maternal and child health care would come together with assistance to the aging for a limited amount of money. Because you have health functions which may have functional relativity, you are creating problems because you have beneficiaries in competition. That may be a first phase of resistance. If you could ever get it past that phase, and actually put it into practice, maybe some of the fears would go away.

Does that impression argue in favor of your point, which is to have some flexibility?

Mr. HARPER. Yes, I believe it does argue in favor of flexibility. I think you find the same kind of thing even in the general health services and preventive health services block grants. Here you have funded beneficiaries, such as the medical institutions or doctors doing research. You also have patient beneficiaries, as well as programmatic differences ranging between emphysema and sudden infant death syndromes—different people with functional interests, but they are different categories of recipients.

Senator DURENBERGER. One of my concerns in the blocking process is the political realities of committee jurisdiction within the Senate and the House.

Mr. HARPER. Right.

Senator DURENBERGER. The question arises as to whether or not you can draw a functional or beneficiary limitation which would overcome the hurdles of conflict between committee jurisdiction. If you could put it into law in some way, so that it might help arm the President with the tools he needs to do consolidation regardless of the chairman or chairperson on whom he may be stepping.

Is that at all possible? To what degree, in your opinion, is this whole business of committee jurisdiction a problem in consolidating and/or blocking?

Mr. HARPER. The committee jurisdiction issue is a very important one, because, under the present procedures, one has to give some thought as to the assignment of any consolidation block grant proposal when it comes to the Congress. For example, the social services area may have a nutrition program that may find itself on an agriculture committee. It may have another social services related program on another committee in Congress, and both committees may want to review both issues when you get to the grant consolidation process. It's a fascinating prospect to have an accelerated congressional consideration of a block grant proposal. Thus we are very enthusiastic about that possibility and are strongly supporting title I in the bill.

Senator DURENBERGER. Would this administration use the consolidation titles for block grants if it didn't have the automatic discharge provisions which are in Senator Roth's bill?

Mr. HARPER. Without the expedited discharge provisions, I'm not sure that we have made a great step forward.

Senator DURENBERGER. Do any of your proposed block grants exclude individuals who are eligible under the consolidated categoricals?

Mr. HARPER. I don't believe any of them do.

Senator DURENBERGER. There is some reference in your printed statement to Senator Sasser's bill, S. 45. The reference deals with the hold harmless protection of the status quo. Do I read that as an objection to the protection in S. 45 which would prevent those who are currently eligible from being excluded under the block grant?

Mr. HARPER. Our chief concern there is really the entitlement. For example, if you created a block grant program out of several entitlement categorical grant programs and then, let's say, there was some dynamic whereby one group of entitlees grew either by number or by dollar value. They would suddenly put the State and local government in an impossible situation of having demands and an entitlement requirement, yet not having the resources to meet those entitlement requirements. Thus we feel there should be some flexibility there to acknowledge that possibility.

Senator **Durenberger**. Do you share the opinion that funds not expended from the consolidated programs should revert to the Treasury rather than return to the agencies involved?

Mr. **Harper**. Yes, sir, I do, because I believe that the only thing we are dealing with is the taxpayers' money. It always belongs to the taxpayers. It doesn't belong to any agency or any program. The President makes proposals to the Congress and the Congress will make a decision as to how those taxpayers' dollars ought to be allocated.

Senator **Durenberger**. A very political statement. I hope you can all live with that. [Laughter.]

Your opposition to title II is couched in the words, "Title II contains excessive procedural detail." We are anxious to move into the markup process on this. This is one reason we appreciate your advice. Could you give us some examples of the most excessive procedural details in title II which you think we should give attention to deleting?

Mr. **Harper**. One of the things we would be happy to do is sit down with a member of your staff and go through this in any level of detail that you would like. Frankly, we have had lengthy internal discussions at the Office of Management and Budget about this title and the whole issue. I think it amounts to kind of the fundamental concern that we have. That is, that the Constitution grants to the President the executive power to carry out the laws established by the Congress. The more specific the definition with respect to administrative and procedural detail, the more unnecessarily complicated becomes the job of trying to decide what is that executive power as it relates to a specific situation.

For example, one of the things we got into a discussion about was that if you say you shall audit every 2 years, does that mean you can't audit every year if there is some reason to do so? The point was that it creates a lot of new questions about what the President, or the executive branch, can and cannot do. I think that the problems which are highlighted in title II are very real problems that need to be addressed. Primarily, they should be addressed administratively. Thus, the language that we would be enthusiastic about supporting is one which clarifies the issue—that any legislation to the contrary notwithstanding the single audit approach may be implemented. That's not legislative language. I'm sure that we can provide you with something that is more acceptable along those terms, but that's the nugget that we would very much like to see in title II.

Senator **Durenberger**. The suggestion of getting together and working this out is appropriate. Obviously, the pressure to go into more procedural detail in legislation is the result of the excessive use of executive power when the Congress fails to go into more specific detail. Now, we are asked to take it that an administration is going to just reverse and use the vagueness in legislation to give it the authority to do things that are good for people, rather than detrimental. That might be hard to sell to some of the members of this committee.

Mr. **Harper**. I gather as well, but some of the motivation may be the feeling that the Office of Management and Budget hasn't done enough in the past to solve some of these problems. There are some legislative mandates and directives to the Office of Management and Budget to do specific things. I guess one of the things that I tried to bring out in my statement is that, realistically, we can't do everything at once. What we would like to propose to the subcommittee is that we set some priorities and that these priorities be the kind of agenda and driving force for the activities of the Office of Management and Budget in this term, especially grant consolidation and the single audit. For example, the single audit, in itself, requires a good, careful look at the issue of guidelines in crosscutting standards, because we must, for the purpose of the single audit, define for the auditors exactly what you are going to look at to determine whether or not the recipients are in compliance.

Senator **Durenberger**. Do you have any reason to believe that, if this legislation were made less comprehensive, less detailed, it might have more success in passing in the House as grant reform legislation or consolidation legislation?

Mr. **Harper**. I think it might, because, if for nothing else, it would have our more enthusiastic support.

Senator **Durenberger**. Would that help over in the House? [Laughter.]

Mr. **Harper**. I don't know.

Senator **Durenberger**. Have you had specific conversations with some of the people over there as to their positions in the future?

Mr. **Harper**. No, sir. I have not. I believe some of my colleagues have had some specific discussions with them.

Senator **Durenberger**. On the issue of direct reimbursement, does OMB favor direct audit reimbursement with or without title II?

Mr. **Harper**. If I may, I would like to have Hal Steinberg respond to that, as he is experienced in that specific area. I will give him a chance to say a few words.

Mr. **Steinberg**. I guess I would answer by saying that direct reimbursement is appropriate when the auditors are working directly for the Federal Government. We actually have a good deal of that going on right now. We bring in auditors on specialized projects or for followup engagements that go beyond the scope of what they normally do.

We are not as certain that direct reimbursement would work or how it would work when the audit also serves the State and local governments' needs. Indeed, that's what the single audit is supposed to do; it's supposed to be a build onto the basic audit that serves State and local governments' needs. Right now, we do have a method, circular A-87, that provides for auditors to be reimbursed for that portion of the costs related to Federal requirements. The pressure from the State and local governments' audit community is for that payment to go directly to the auditors. That pressure does not exist in the State and local governments' budget offices and other officials. They feel that that kind of payment process really undercuts the State or local governments' grant appropriation process. Philosphically, we have not come to grips with the problem. The mechanical details need to be looked at a lot harder, too.

Senator **Durenberger**. Let me ask you some questions, then, about crosscutting requirements and what we would do without title III in S. 807. I heard some reference in your summary that Congress will have to act on a number of these. I think that's appropriate. Let me see if I can, in a couple of questions, ask you how far you think you can go without congressional action.

How would OMB implement the language found under Public Law 95-224 without the title III in S. 807?

Mr. **Harper**. I would like Jim Kelly to respond to that question, if I may?

Mr. **Kelly**. We have begun already to outline a management process by which we would work with each individual agency to do a number of things. First, to select priorities, if you will, as to which of these are the most important and which are the most burdensome ones that have their basis in administrative requirements as opposed to statute. Which agencies are the primary agencies for responsibility in that area. What are the specific requirements, or concerns, that individual recipients, or groups who represent individual recipients, have about the way in which those requirements are implemented, or the way in which they are in conflict with others.

We would attempt to lay out, through the management process which we proposed in a circular last fall, a listing of the most important issues that could be dealt with administratively. As Dr. Harper has said, we would then put a priority to those and work them on through in a timetable that was acceptable to correct the problem.

I think the principal thing that we would first attempt to do is separate the most important and the most burdensome ones. To go through in a very systematic way, identify specifically what the concerns are, and then begin to address those concerns in a regular, expedited process as quickly as we could.

Mr. **Harper**. Mr. Chairman, this reminds me of something that has happened in a study we were doing on a particular agency situation. It is about the issue of what can we do administratively and what do we need law to do.

We were told by a particular agency that they had to take this particular action. So some of our fellows, including a couple of people from our counsel's office, went over to visit with the agency and to talk with them about it. They finally got down to looking at the basic statute. The statute says the agency "may" do this.

Our folks from OMB said, "Well, why have you been doing this? It says you 'may' do this." They said, "Well, it is standard practice. Whenever we see the word 'may' in legislation, we interpret it to mean we 'shall' do this." We had opinions from the General Counsel of this agency that they had to do something which, when we went back to the original legislation of the Congress, we found it was permissive rather than the requirement.

That is the kind of detailed analysis I am afraid it is going to take before we can be totally responsive to the intent of your question: Which items can we handle administratively and which must we come back to you with—come back to legislation.

Senator **Durenberger**. Where are you in the process of designating lead-agencies for each crosscutting requirement?

Mr. HARPER. The cognizant agency is one of the requirements in the single audit--that we have to designate the cognizant agency to implement that. So we are in the process of implementing one of our priorities that we have identified as a cognizant agency.

Senator DURENBERGER. Without title III, would OMB design a conflict resolution process to manage the implementation of crosscutting requirements along the same lines that S. 807 does?

Mr. HARPER. As a matter of fact, that has been the subject of much internal discussion recently—developing a circular on a conflict resolution process. We haven't reached a conclusion on it, quite frankly, because there are so many different agencies with so many different issues. We may find ourselves in the position of not being able to come up with a single conflict resolution process which applies across the board, because there is such a welter of things.

One approach, which has some appeal to me, is that we come up with some of the essentials of due process and put that forward as guidance for the agencies in managing their conflict resolution process.

Senator DURENBERGER. My last question deals with the certification process contained in the bill. Would OMB design and implement a certification process to simplify the process of managing crosscuts?

Mr. KELLY. I think we very much favor the approach of the certification process.

Senator DURENBERGER. That is all the questions I have. Do you have any further comments to add?

Mr. HARPER. No, except that we appreciate the opportunity to be here. Maybe our testimony has made life a little bit more complicated in terms of proceeding with the legislation, but this was kind of a long, difficult decisionmaking process within the Office of Management and Budget to come up with our decision. I think we have developed one that we feel is reasonable, is sound, is realistic in terms of what we would commit to the subcommittee in terms of priorities and resources. We would like to continue working with this subcommittee in looking at what our priorities are, because we want to be responsive and implement the things—the priority things—that need to be done to improve the Federal assistance program.

Thank you.

Senator DURENBERGER. Thank you very much. Whether we agree or disagree with your position, we all appreciate the fact that grant reform is a priority at the highest level. Whether we incorporate everything in the legislation or not, it should be clear to people that we are moving in the direction which we have been asked to move for a long, long time.

Thank you.

Mr. HARPER. Thank you.

[The prepared statement of Mr. Harper follows:]

FOR RELEASE ON DELIVERY
Expected at 09:15 A.M.
Wednesday, April 22,1981

STATEMENT OF EDWIN L. HARPER
ASSISTANT TO THE PRESIDENT, AND
DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SENATE SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS

Mr. Chairman and Members of the Subcommittee:

Mr. Chairman, it is a pleasure to appear before this panel to discuss the range of reforms that are proposed to aid in the administration of federal assistance.

Before presenting my support for key aspects of this legislation and providing views on the various titles contained in the two bills - S. 807, Senator Roth's bill, and S. 45, Senator Sasser's bill, - I would like to express some of my thoughts on federal assistance itself, and on what I see as the Executive Branch's responsibility to assure the equitable distribution of assistance monies in the least onerous manner.

We in the Executive Branch are proceeding in several ways to improve the administering of federal assistance in line with the goals of this Administration, and which were announced by the President on February 18th. These actions will help us in resolving problems such as those that led to the introduction of these proposed bills. Two months ago, Director Stockman testified before this subcommittee on the impact of the President's Economic Recovery Program on state and local governments. He was preceded that day by a number of state and local elected officials, and particularly by Governor Snelling of Vermont. Governor Snelling insisted that if state government was to accept the cuts in federal aid which we propose in the budget, then those reductions must be accompanied by a concomitant lessening of the burden that goes with receipt of that aid. At that time, the Director accepted the appropriateness of the Governor's view, and committed OMB to providing state and local government with greater program, resource, and policy flexibility. We have begun to meet that commitment.

The block grant proposals made to the Congress by the President will provide state and local government recipients of these funds with a significantly greater flexibility to adjust and target resources and will appreciably alleviate the regulatory burden imposed by the former categorical grant programs. Morevover, these proposals will reduce the numerous program and administrative requirements that accompanied the categorical grants and eliminate much of the reporting.

We have also started work under the recently enacted Paperwork Reduction Act. We expect to end duplicate federal agency requests for data and minimize the reporting load.

The President's Executive Order 12291 on Federal Regulation and the President's Task Force on Regulatory Relief, which is chaired by the Vice President, reflect the clear intent of this Administration to end the ever-spiraling expansion in federally-imposed mandates and orders, and to bring existing requirements within the framework of reasonableness and common sense.

The tally of federal assistance programs totals over 1000, with more than 500 of these funding state and local governments. Our current block grant proposals consolidate 83 of this latter number. Title I would enable us to consolidate many additional programs. However, some categorical programs will remain and pose problems that the other titles of the proposed legislation address.

I submit that as a financial phenomenon, federal assistance to state and local governments is not an insignificant proposition. In 5 of the 13 cabinet departments and in EPA, assistance to state and local governments represents the largest portion of the funds they obligate. The total annual amount of such assistance in recent years has approximated $100 billion. While the policies of this Administration will scale back this amount, the total sums will remain quite large and worthy of sound administration.

We cannot proceed toward a devolution of substantial activities and sources of revenue from the federal government to state and local government without considering the prescriptive requirements and conditions associated with most federal assistance programs. Nor should we unnecessarily add to the burdens of state and local governments by asking them to overcome the complexity and confusion which often arises from federal mandates. For example, the costly and sometimes inconsistent requirements which derive from Section 504 requirements on access for the handicapped and contradictory and overlapping federal audit requirements are frequently cited in this regard.

This legislation has been proposed to raise the administration of federal assistance to a deservedly important status. We do have a general concern, though, that both bills have not yet struck the best balance between an expression of legislative intent and a complementing level of detailed guidance and instruction. The tilt we see on the scale is too much toward the latter, and we have prepared for your consideration a series of recommended changes to remedy this.

Let me now provide some specific views on the various titles.

The provisions of S. 807 for Title I, the Consolidation of Federal Assistance Programs, are strongly preferable to those in S. 45. The absence of an automatic discharge provision in S. 45 would permit a committee of primary jurisdiction to halt consideration of a plan. Without the automatic discharge provision, we see no advantage to submitting consolidation plans under this title. They could easily and readily be relegated to legislative limbo.

We generally prefer the latitude in S. 807 that allows consolidation along budget function lines rather than by recipient class, and we would favor extending this latitude under this title even further. For certain programs or activities, it may be more desirable to consolidate either by cross-function or recipient class.

We prefer the authority in S. 807 that allows an adjusting of the entitlements or eligibilities in a consolidation plan, so long as the basic purposes and goals established under the programs being consolidated are not thwarted. S. 45 does not provide this flexibility because it specifies a hold harmless protection of the status quo. The authority to adjust makes sense. For example, if every program that is consolidated is an entitlement program, a spurt of growth in the cost of one consolidated entitlement program might leave state and local governments with insufficient resources to meet the requirements of the other entitlement programs. Such a prospect would place state and local governments in an impossible situation.

We would prefer with the added flexibility in S. 807, which places no time constraint on when a consolidation plan can be submitted, and also with the authority in that bill to have the Congress consider more plans under this title than would be allowed under S. 45. Any bill should allow consolidation plans to be permanent, rather than expiring at a time certain. Finally, we should point out that, similar to the reorganization statute, the President would always have the choice of submitting a grant consolidation plan or to propose regular grant consolidation legislation as President Reagan already has done this year. In no event should consideration of this title in anyway impede Congressional consideration of program consolidations, such as the block grant proposals, currently being proposed by the Administration.

We do have a number of other detailed comments which we feel can improve the effect and intent of this title. For example, we propose eliminating the specificity in Section 1002 which sets forth a time period when the President is to review all federal assistance programs, and substituting this with a more general indication that he should do so periodically. We will submit these changes separately to the Committee for its consideration.

Once we move beyond Title I, it is important for us to register a fundamental concern. At all cost we want to avoid new legislation which would unnecessarily and inappropriately limit the President's executive power granted by the Constitution. For example, we feel that in general, Title II contains excessive procedural detail. These procedural details can and should be addressed administratively.

However, one aspect of Title II - the single audit - deserves consideration for legislative status. We have already taken initial steps to introduce single independent audits and to improve the effectiveness of the federal government's financial management efforts. The statutory expression of Congressional intent on single audits will signal to all of government that such audits are preferable to individual program audits. In Title II, we would prefer stripping out those revisions which are unnecessarily detailed and which can be handled administratively. These revisions would greatly simplify the title and allow us to retain some discretion in the manner by which we proceed administratively and the coverage we provide.

I have a final note on the first two titles. I believe we must be attentive to the reasonable exhortations of others, especially regarding simplification of requirements and reporting. Thus, while we recommend deleting the several reporting requirements, and easing some of the prescriptive content of what we should do and how, I assure you that we will not forget your intent, nor lose sight of the demonstrated need for action in this area.

On Title III, we can agree with the basic concepts, but we believe that it would be an error to specify, in law, how we should satisfy those concepts. To the extent that the generally applicable requirements that this title addresses are statutory, relief must take the form of legislative changes which only Congress can undertake. Those of the requirements which have been imposed or extended administratively can and are being addressed using our existing administrative and regulatory authorities. The detailed prescriptive lanaguage of Title III would not facilitate this process.

Title IV of S. 807, and Title III in S. 45 concern Joint Funding Simplification. The two titles differ in their approach. S. 45 contains the basic redrafting of the Joint Funding Simplification Act which had been included in S. 878 of last session. At the time S. 878 was drafted, the Joint Funding Simplification Act was expiring and required reauthorization. That reauthorization occurred at the end of the last session. Because of this reauthorization, we would prefer the perfecting amendments in S. 807 which make certain activities mandatory, change the description of the joint management fund to an integrated funding process, and adjust slightly the manner of funding.

We consider Title V, Integrated Assistance, and which is present only in S. 807, to be consistent with the broader aims of the Administration to give more program flexibility to state and local governments.

We find the contents of the Miscellaneous Title in both bills quite disparate. Let me briefly summarize our views on the major sections in this title.

The provisions in S. 807 for federal agency waiver of single state or local government unit designations or internal organization patterns where such are specified in federal law are acceptable to us. We will provide the Committee with several possible ideas for strengthening this section.

The repeal in S. 807 of the maintenance of effort provisions required of state and local governments is consistent with the goals of this Administration, and follows our block grant proposals.

To the extent that statutory recognition of a state oversight role over federal funds is included, we prefer the provision in S. 807 which is neutral as to which entity of state government is given such a role. Within the Executive Branch, we are making every effort to ensure the neutrality of the federal agencies in their relationships with state governments.

We prefer the section in S. 45, which is not in S. 807, that allows federal agencies to waive compliance with a major change in administrative requirements associated with federal assistance for state and local governments. This is an effort to give some relief to those governments who have made a substantial good faith effort to comply with federal administrative requirements prior to a change in those requirements.

We feel the provision in S. 45 requiring advance notice to recipients of prospective withdrawals of federal assistance, with an explanation and an opportunity for the recipient to show why the action should not be taken, imposes too much rigidity on what should be a timely and flexible decision process.

The twin authorizations in S. 45 for an annual analysis of administrative costs of the 100 largest federal assistance programs and for the pilot study to develop methods for assessing these administrative costs are unnecessary and should be deleted.

Mr Chairman, like the Committee, we have heard the elected state and local government officials who testified before this Committee on the need for reasonable solutions to the overbearing levy of federal requirements. We have read the findings of the General Accounting Office and the Advisory Commission on Intergovernmental Relations, that describe an administrative scheme where contradiction and duplication often prevails. We are taking steps to deal with these matters.

Mr. Chairman, under such circumstances we welcome the Committee's and your continuing interest in this area. We support the legislative intiative you have shown this year. My staff and I are willing to work with you in any possible way in this regard.

Senator DURENBERGER. Our next witnesses are Mr. Carl Stenberg and Mr. David Walker from the Advisory Commission on Intergovernmental Relations. Both Mr. Stenberg and Mr. Walker are Assistant Directors with the ACIR, a Commission which has been of great assistance to this subcommittee in reviewing the needs for grant reform.

I welcome both of you here. I invite your statements in whatever form you would like to deliver them. Your printed statements will be included in the record. Any summary statement would be appreciated.

TESTIMONY OF CARL W. STENBERG, ASSISTANT DIRECTOR, POLICY IMPLEMENTATION, AND DAVID B. WALKER, ASSISTANT DIRECTOR; GOVERNMENTAL STRUCTURE AND FUNCTIONS, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Mr. STENBERG. Thank you, Mr. Chairman.

We are delighted to be here to testify on behalf of the Advisory Commission on Intergovernmental Relations in support of the Federal Assistance Reform Act and the Federal Assistance Improvement Act.

The principles, policies, and practices embodied in S. 45 and S. 807 are no strangers to this subcommittee, since similar bills were considered beginning in 1978. We congratulate you, Chairman Durenberger, as well as Senators Roth and Sasser, for your leadership in this area.

With your permission, I will highlight the first two titles.

My colleague, Dr. Walker, will summarize our views on the other titles. I ask that our full statements be included in the record.

This is ACIR's fourth appearance before the subcommittee to testify on pending Federal assistance reform legislation. We do so with mixed feelings. The election of a new President and Senate, the pressing need to reorder Federal budget priorities, and the strong dissatisfaction with the dysfunctional and congested nature of much of contemporary intergovernmental relations all suggest that we are witnessing an all too rare moment in our Nation's history when much-needed and long overdue changes in the nature and extent of the Federal Government's role in the Federal system can be made. The subcommittee has before it two pieces of legislation which would go a long way toward improving the design and the implementation of Federal assistance and reducing the high overhead costs, paperwork burdens, and administrative headaches that have been associated with grants-in-aid in the past.

Both of these bills contain provisions that, in our judgment, are consistent with the administration's federalism agenda, and carry out recommendations contained in studies conducted by the Office of Management and Budget, the General Accounting Office, the ACIR, and others. Much of the contents of each bill has been subjected to basic questioning as well as "fine tuning" by the subcommittee over the past 3 years.

All of this is certainly encouraging, Mr. Chairman. It suggests that perhaps we are really in a new ballgame as far as the politics of Federal assistance are concerned. But perhaps not. Having listened to statements presented during the two previous hearings on S. 45 and S. 807 and recalling testimony on earlier versions, we are aware of a number of concerns about certain features of the legislation. Some of these concerns are substantive or technical, and probably can be dealt with during the course of the subcommittee's consideration of the bills. Others, however, are more of a political nature and they reflect the fears on the part of special interest groups, Federal agencies, and Members of Congress that the old ways of doing business in the Federal assistance field will be irreparably disrupted.

To the defenders of categorical aids, these bills are objectionable because, among other things, they would facilitate the elimination, merger, or streamlining of pet programs and regulations. They would reduce Federal intrusiveness in recipient decisionmaking and give State and local officials more discretion. They would change the nature of accountability for the use of Federal funds, and they would establish a strong central management presence in the Federal Government.

The so-called "iron triangle" will fight hard to retain the old ways of doing business. Their collective strength should not be downplayed or dismissed. Recall their capacity during the 1970's to expand categorical aids and to encourage the "creeping conditionalism" phenomenon that has been associated with the health, criminal justice, community development, and employment and training block grants as well as with general revenue sharing.

Whether they succeed in this decade depends largely on the capacity and commitment of members of the subcommittee to play a strong and sustained leadership role as far as Federal assistance reform in the 1980's is concerned. We feel you have made an excellent start.

With this by way of background, Mr. Chairman, we would like to turn to the bills under consideration. Since the first four titles of both S. 45 and S. 807 cover the same general areas, we propose to comment on their desirability and feasibility in a comparative fashion. We will then turn to the remaining titles of each bill. In so doing, we will also try to respond to some of the concerns that have been expressed and suggest ways to deal with them.

In the current budget climate where attention has been riveted on the Reagan administration's efforts to cut, cap, or consolidate

Federal assistance programs, it would not be surprising to find some observers wondering whether title I reflects an idea whose time has come and gone. Nothing could be further from the truth.

The administration unquestionably has launched a major assault on the Federal assistance status quo. No program seems to be immune from scrutiny. This is certainly commendable. The 15 block grant proposals would merge some 130 categorical programs. Another 95 programs would be eliminated in the administration's revised budget estimates. These initiatives, even if partly successful, would make a major dent in the more than 600 categorical aids on the books. And yet, two important considerations should not be overlooked. First, many programs will not be affected by the block grant and budget revision actions due to their exclusion at the outset or as a result of congressional desires not to alter them. Second, while more block grants may well be offered, like the current proposals, there is no assurance that the relevant committees will expeditiously consider them and that they will get to the floor for a vote. In view of these factors, title I of both bills could be a strong complement to the ongoing efforts to reshape Federal assistance.

Title I of each bill authorizes the President to submit plans for the consolidation of Federal assistance programs to the Congress when he determines that these mergers will realize such objectives as giving recipients greater flexibility in adapting Federal aids to their needs, promoting improved administration and planning, eliminating program redundancy, lessening overhead costs and burdens, and enhancing efficiency and effectiveness.

Both bills provide a framework for the President to formulate, and the Congress to consider, grant consolidation plans. Appropriate ground rules are also established.

The nature and scope of the President's actions are well defined. Basically he must name in the plan a single agency as the unit responsible for administering the consolidated programs, explain how the terms and conditions of the plan differ from those of the grants to be merged and the reasons therefor, and specify an expiration date. The President must deliver his plan to both Houses of Congress on the same day and while they are in session. A 30-day grace period must separate the delivery of plans dealing with the same functional area, and not more than three consolidation plans may be pending at one time before a committee of primary jurisdiction. Programs not functionally related cannot appear in the same consolidation plan. Federal agencies not previously responsible for one or more of the covered programs cannot be named to administer the merged ones. A group or person not eligible for assistance under one of the grants contained in the plan cannot be made eligible as a result of consolidation.

A plan can take effect only when the President approves a resolution supporting the consolidation that is passed by both Houses of Congress within 90 calendar days of continuous session after the date of transmittal.

The appropriate committees in the House and Senate must consider a consolidation plan, and report their recommendations to the full House and Senate for a vote. Before a resolution with respect to a consolidation plan has been ordered reported, however, the President may make revisions.

Title I of each bill does not preclude the President from developing other grant consolidation or block grant proposals and submitting them for congressional consideration. This could be done at any time. While some might believe that his approach would be more desirable from the standpoint of maximizing the President's discretion over the candidates for consolidation and the terms and conditions under which programs would be merged into either larger categoricals or block grants, there are two distinct disadvantages. First, proposals developed in this fashion would have to run the regular legislative gauntlet, which in the past has proven to be a very effective means of stalling or killing consolidations. Indeed, many such bills do not progress beyond the introduction stage.

Second, while the Reagan administration has sought out consolidation opportunities with considerable zeal, future administrations might well follow in the footsteps of most of their predecessors and be unwilling to examine and propose necessary changes in the structure of Federal assistance. This reluctance has been in no small measure due to the desire of both Presidents and Congresses to play program politics, and to satisfy or reward various interest groups with new or expanded categorical programs.

Last year, the Commission concluded in its review of the Federal Government's role in the Federal system that the proliferation of categorical grants had contributed a great deal to the "congestion" of the processes of intergovernmental relations. By assuring that a systematic review of existing aid programs would occur on a regular basis—not merely during the life of one Congress or one administration—title I could serve as a significant tool in helping to insure continued attention to the appropriateness of Federal involvement in various fields, in discerning functional areas where State and local governments or the private sector might play a greater part, and in pinpointing potential administrative cost savings. In an era of austerity at the national level—as well as in many State houses, county courthouses, and city halls—it is difficult to overemphasize the significance of these reviews and the remedial actions they would bring about. In short, we feel that both S. 45 and S. 807 provide a useful framework for the President to formulate, and the Congress to consider, grant consolidation plans. They also establish appropriate ground rules for this process.

In comparing S. 45 and S. 807, Mr. Chairman, it's our view that the latter, the Federal Assistance Improvement Act, contains a number of measures that would better insure that the purposes of consolidations would be achieved. These include:

The mandatory 60-day time limit for committees of primary jurisdiction to make recommendations to the House and Senate;

The clearer definition of "functionally related programs," which draws upon the functional categories set forth in the Budget of the U.S. Government;

The statement that a consolidation plan may accomplish one or more of six purposes rather than all of them;

The deletion of the 60-day time period after the beginning of each session of Congress during which the President may submit consolidation plans for "fast track" consideration; and

The requirement that plans not exclude any "purposes and goals," rather than eligible "person or group", under the programs to be consolidated.

To sum up, when the strength and persistence of the forces that in the past have maintained the categorical status quo, fostered new programs, and compromised block grants and general revenue sharing are taken into account, the need for title I becomes paramount. By the same token, any pressures to make wholesale changes in Federal assistance can be channeled through a process that enables their short- and long-term implications for both grantor and grantee to be well understood and provides that timely action will be taken.

The consolidation plan approach, therefore, represents a workable balance between the roles and reponsibilities of the Federal executive and legislative branches in the design of Federal assistance.

Turning to title II, in January of this year, the commission completed action on a year long analysis of the "Fiscal Management of Federal Pass-Through Grants: The Need for More Uniform Requirements and Procedures." While the focal point of this effort was on experience under OMB Circular A-102, dealing with uniform administrative requirements for grants-in-aid to State and local governments, the commission reaffirmed its 1977 recommendation that Congress take appropriate action to provide specific authorization for existing and future OMB circulars to achieve standardization, simplification, and other improvements in assistance management.

In response to findings in the A-102 study that Federal agencies tended to reinterpret or change the requirements in the circular, that clear and consistent explanations of the nature and applicability of these requirements to State and substate agencies were lacking, and that the number of requests for information by agencies to satisfy their concerns about fiscal accountability had proliferated, the commission recommended the following—in part:

> To provide the Office of Management and Budget with the statutory authority needed to promote more uniform and consistent application of the requirements in circular A-102, and to create a greater awareness of the existing requirements on the part of those involved in drafting program legislation, the commission recommends that Congress:
>
> (a) adopt grant reform legislation similar to the Federal Assistance Improvement Act of 1981 which would: (1) provide for improved coordination of audits and prescribe appropriate means for reimbursement; (2) standardize and streamline administrative requirements; and (3) consolidate Federal programs which create unnecessary requirements for recipients * * *.

In our view title II of S. 45 and S. 807 represents a major step in this direction. Particularly significant is the provision which provides OMB with specific statutory authorization to "develop, establish, and maintain for use by all Federal agencies standard accounting, auditing, and financial management policies, procedures, and requirements for the administration, accounting, and financial auditing of grants, contracts, cooperative agreements, and other forms of Federal assistance to State and local governments, nonprofit organizations, and federally recognized Indian Tribes." The directives issued by the Director of OMB are binding.

OMB has developed over the years many circulars, but, on occasion, the legal basis of some circulars has been subject to question.

The commitment of Federal agencies to the implementation of circulars has also been uneven. These provisions of title II, therefore, should help bolster implementation efforts.

Title II illustrates how Congress should address some of the problems involving audits. OMB is directed to prescribe effective means of coordinating Federal, State, and local audits of grant programs. The authority granted OMB here, combined with its ongoing efforts to implement and disseminate the information in Circular A-102, including attachment P on audit requirements, are much needed improvements to achieve greater consistency in the performance of audits on recipients and subrecipients of Federal assistance awards. In addition, the title also calls upon the Director of OMB to determine how audits of Federal funds will be paid for—an increasingly sensitive subject.

With respect to the technical aspects of this title, S. 807 contains a number of desirable changes which refine certain definitions, especially dealing with "nonprofit organizations," and conform them to those in other titles, clarify the reimbursement procedures, and make consistent the use of terminology.

In short, Mr. Chairman, we feel this title is a necessary component of any effort to improve management of intergovernmental assistance in the years ahead.

Dr. Walker will now cover the remaining titles of the bills, Mr. Chairman.

Mr. **Walker**. Mr. Chairman, turning to the remaining titles of these two pieces of legislation, title IV of S. 45 and title III of S. 807 deal with the administration of requirements that are generally applicable to Federal assistance programs. Two basic types of requirements are involved here: Those that are legislated in a single act which specifies across-the-board coverage, such as environmental protection and uniform relocation—legislation that this committee sponsored and initially achieved passage of; and those that are fairly standard features of legislation authorizing individual aid programs, such as citizen participation, merit systems, and prevailing labor rates.

Most of these generally applicable requirements have been imposed by the Congress on recipients as conditions of aid in response to interest group pressures, to demands that national priorities be met, and to concerns about the willingness and capability of recipients to take these matters into account in the absence of a Federal mandate or directive. Indeed, most State and local officials probably would agree that decisions on how to spend Federal funds should not adversely affect the environment, historic sites, the rights of minority groups, handicapped individuals, and the like.

As this body of national policy requirements has grown, however, no official, no agency, and no administration in Washington has even begun to consider their cumulative administrative and fiscal impacts. In short, nobody has been aware of the fact that we have really slid into a new area of regulation, quite different from the approach launched in 1977.

The development and implementation of these Federal regulations frequently occur in an uneven and confusing manner. With some requirements, the degree of flexibility accorded recipients varies from agency to agency, as does the extent to which a given set of regulations is responsive to State and local conditions and compatible with their financial and administrative systems. Generally applicable requirements are ineffectively coordinated for the most part, and hence there is a considerable amount of inconsistency among the regulations issued by different agencies in the same generic area.

Title IV of S. 45 and title III of S. 807 respond to these problems in an effective, and we think, workable way. The President is authorized to designate a single agency in a number of specified areas to establish standard rules and regulations and to monitor the implementation by Federal assistance agencies. The congressional intent that such regulations be simple and clear is a significant concomitant to standardization, for simplification of complex rules is clearly as important as the need for uniformity. Procedures are spelled out to insure that efforts to achieve uniformity are implemented in a timely manner. Some might consider these as overly restrictive, but, in light of the past, we have felt that they are very necessary, and that changes requiring legislative action will be called to the attention of the Congress. Congress, after all, is the author of all of this legislation.

Some have contended that standardization along these lines cannot or should not be done. Spokesmen for certain interest groups have argued that such action would dilute the intended effect of these national policy requirements. Some State and local officials, on the other hand, are concerned that standardization would give these interests and their allies in the Congress and the Federal bureaucracy an opportunity to press for even more stringent national conditions. Still others have argued that standardization is essentially an administrative process that should be handled by the executive branch rather than by the Congress.

We believe all these arguments are adequately handled in the bills. A three-tier approach is embodied in S. 45 wherein a designated agency coordinates the preparation and implementation of a standard and necessarily general set of regulations by an interagency task force, which is then, in turn, refined and carried out by assistance agencies. S. 807 calls for a two-tier process, which does not rely on a task force. Both approaches strike a good balance between the need for a national minimum standard or level of effort and the need for a sufficient amount of agency flexibility. Given the very mixed record of interagency bodies, however, our preferences would be for the two-tier approach since it focuses rather than diffuses the standardization effort.

Turning to the second contention, the recent record demonstrates that a solely administrative approach is not the best way to bring about improvements in assistance management. The Carter administration's effort to standardize regulations in the civil rights, environmental quality, and citizen participation areas showed that executive branch action alone was insufficient to reconcile the inconsistencies encountered in these three areas. Many of these rules, after all, are of statutory origin and hence they require legislative remedy. Again, S. 45 and S. 807 permit an executive branch solution where it will suffice but, equally important, the Congress' involvement is required where that is found to be necessary.

A key feature of the title is the authorization of certification procedures as a means of streamlining the regulatory process.

A third provision of this title calls for the modification, or the elimination, of those national policy requirements that are found to be excessively expensive, unnecessarily complex, or clearly inappropriate. I would add unimplementable to this list, since a number are of this type. In such cases, amendatory or repeal proposals would be forwarded to the Congress by the President. In short, the problem would be put back on the doorstep from whence it came.

Finally, and importantly, the title calls for a prominent Office of Management and Budget role in monitoring implementation. Such a central management authority is conspicuously absent from our contemporary aid system and is vitally needed to assure proper Federal agency understanding and execution of the various aspects of this title.

Besides these differences, S. 807 also contains a number of other specific improvements over the contents of S. 45 including:

An expanded statement of purpose covering elimination—relying on that almost as much as standardization—of requirements that are unnecessary, infeasible, or inappropriate;

A definition of Federal assistance that is consistent with that used in the consolidation title;

A shorter time period—1 year versus 2 years—for the development of national policy assistance standards;

Clarifying language that a single designated agency would prepare national policy standards in each subject area;

The provision of a 1-year period before certification processes would get under way to allow sufficient time for OMB and assistance agencies to develop procedures and guidance—here we think we have been rather permissive rather than restrictive; and finally,

Elimination of the statement that national policy assistance standards shall not diminish or detract from a wide range of statutory, as opposed to constitutional, prohibitions of various kinds of discrimination.

In short, this title, we think is now better than ever before, Mr. Chairman. In effect, the National Government under this administration has entered into a compact with the States. Between now and October 1 of this year, the fiscal cuts will be put in place. Whether the reducing of some of the conditions, which are part of that compact, is honored very much hinges, we believe, on enactment of this legislation.

Title III of S. 45 and title IV of S. 807 would make a number of amendments to the Joint Funding Simplification Act of 1974, which was renewed without significant change by the Congress last December. Joint funding, of course, is a management tool that was designed to permit recipients to administratively group grants used for the same project. Until recently, the process has been little used. Reports by OMB and GAO, however, present strong evidence that, where joint funding is given adequate support, it does work and can realize substantial cost savings and improve service delivery.

While some might say, Mr. Chairman, that joint funding is more a paper shuffling process than a meaningful management improvement effort, our belief is that the act and Circular A-111 should be given another chance and that greater statutory direction should be given as to Federal agency participation and OMB's oversight role.

Title V of S. 807 provides a potentially significant approach to improving the effectiveness and efficiency of Federal assistance programs. It authorizes applicants to submit a plan for transferring funds from among various programs in the same subfunctional category, as described in the budget, by up to 20 percent of the amount it received in the base fiscal year for the covered programs.

This idea, Mr. Chairman, is something the commission endorsed in 1961 in the public health field. It clearly is an idea that has not caught on until recently. This is another kind of freeing up of discretion and infusing of more flexibility that is part of the compact I made reference to before. This particular title, to some degree, takes on even greater urgency since it doesn't, in any way, menace or require changes in the basic structure of categorical systems that may still be in place by October 1 of this year.

I would like to turn to the miscellaneous provisions. Though they look meager, each addresses some very important features. The Intergovernmental Cooperation Act contains a single State agency waiver intended to resolve the issue of the single State agency requirement concerning a provision injected in Federal legislation going back to the 1930's.

The persistence of this requirement, and its later day application by Florida and other States—Florida in particular, since it went to court on this issue—demonstrated the need for a more effective single State waiver provision and for a tightening of the old 204 section of the Intergovernmental Cooperation Act of 1968.

The language in title VI of S. 807 is intended to meet the district court's concerns in the Florida vocational rehabilitation case and, in so doing, to encourage greater Federal administrative use of the single State agency waiver provision. This section, like the consolidation title, strikes a blow against arbitrary Federal intrusion into management and, in this case, headquarters/field relationships at the State and local levels. It seeks to curb inappropriate Federal meddling in the wholly administrative concerns and actions of recipient jurisdictions.

Turning to the need to standardize maintenance of effort requirements, in the budget environment these provisions take on an extremely topical character.

The ACIR's study of the intergovernmental grant system identified 84 grants in 48 functional areas having "maintenance-of-effort" or "nonsupplant" requirements. These provisions are applied to assure that State and local governments do not use Federal assistance to reduce their own expenditures or as a substitute for their own revenues. Problems arise, however, because many such requirements are ambiguous and vary widely from program to program.

GAO has highlighted this particular phenomenon. These inconsistencies result in confusion, improper compliance, and wasted staff effort at the recipient level. Title VI of S. 807 would rectify these problems by first repealing all such requirements, and then establishing a standard maintenance-of-effort provision to be used whenever Congress desires to insure that the granting of Federal assistance will not reduce relevant State and local expenditures.

Third, with this miscellaneous title, we cover a somewhat delicate area of State oversight in a way that recognizes the prerogatives and responsibilities of both the legislature and the Governor in the application for and acceptance of Federal assistance. This amendment supports the basic constitutional concepts of fiscal accountability and purse-string control by elected officials rather than by administrators. The Federal Government should not intrude into these legitimate areas of State decisionmaking.

To conclude, Mr. Chairman, this legislation used to be considered in highly incremental, good governmental terms. However, it takes on a sense of urgency this year, unlike the sense of urgency that we would have hoped it characterized in the deliberations on it in prior years. At this point in time we do have a compact between the Federal Government and the States. The issue of conditions and the issue of the transfer of funds are critical. The question of maintenance of effort and the suspension of that section 707(c) takes on extraordinary significance. As it stands now, given the pace of the Congress, we are probably going to be in the position of a significant number of block grants not being enacted and still being in place. In short, the conditions will still be there and the cutoffs or reduced funds will also be there.

In short, the compact will not have been honored. This legislation, in light of those exigencies, can provide significant remedial actions. We would urge early passage.

Senator **Durenberger**. Thank you very much for your testimony. Before I ask you a specific question, I would like to comment from the perspective of how much of this gets put into law and how much of it is left to discretion. I can imagine the concern for the future of anybody who has been dealing with these issues over a long period of time. It's described earlier in your joint statement as yielding to the temptation of program politics.

Frankly, I am of the opinion that, if this administration continues its so-called zeal for grant consolidation and for making compacts with other levels of government, if it adds some limitations on Federal revenues—either by indexing or balancing the budget, it will be an awful long time in this country before it's possible to yield to the temptation and go back to the old program politics.

I assume that what we are talking about is how to bring that zeal together with the legislative savior. Clearly we are going to have to do that as quickly as possible. Let me ask you a series of questions to which either, or both, of you can respond. Let's take the various titles one at a time.

On the issue, first of consolidation, ACIR has been studying the 15 block grants that have been proposed by the Reagan administration—or that will be proposed, depending upon their condition. The general rule seems to be to block and cut. The norm for the cuts is 25 percent. I have seen many that vary from that. Does 25 percent reflect the administrative overhead which is eliminated by the blocking, or is that figure too high?

Mr. **Stenberg**. I suspect that interest in administrative costs and overhead is one factor why a study was authorized of this nature in S. 45. Having looked at the block grants enacted in the late 1960's and early 1970's, we found a great deal of difficulty in determining administrative costs or overhead figures. Methodologically it was extremely complicated; it involved, as well, a number of basic value judgments as to whether planning, for example, was overhead. What we did find was a shift in the administrative cost burden under block grants from the Federal level to the State and substate or local levels. Many of these people, for example, criminal justice planners and administrators, were paid for by Federal funds. So there was a shifting of the administrative cost, not necessarily an overall reduction. With respect to the 25-percent figure, we are not prepared to comment as to whether it's too high or too low.

Senator **Durenberger**. Have you found, in your examination of the blocks, a particular block in which your comfort level with the 25-percent figure would be on the high side of average?

Mr. **Stenberg**. As I recall, the studies that we have done, as well as some staff work that the OMB and GSA did at about the same time, were not conclusive. In the LEAA program, for example, our administrative cost figure was between 11 and 12 percent. But again, these numbers are very soft because of the difficulties that I have cited.

Senator **Durenberger**. Have you examined the 15 block grants to determine which would qualify for expedited treatment under S. 45 or S. 807, and which would be excluded?

Mr. **Stenberg**. From the standpoint of whether they would fall within the definition of functionally related?

Senator **Durenberger**. Yes.

Mr. **Stenberg**. No, we have not, Mr. Chairman.

Senator **Durenberger**. Is it your general view that "functionally related" as defined in S. 807 is broader than the beneficiary limitation in S. 45?

Mr. **Stenberg**. Mr. Chairman, it is our view that it is clearer. Because of that, it is more desirable. The commission has been on record since 1967 calling for grant consolidation. Since that time, we have had the question put to us, "What do you mean by functionally related programs?" We have been struggling with an answer since then.

The best that we have seen is the definition in S. 807 which ties this matter back into the actual budget document and the functional categories that are established in it. Our feeling is that this adds greater precision and clarity to this otherwise ambiguous term.

Senator **Durenberger**. It was suggested earlier in the day by GAO that we not try to be too specific on the legislative language and not try to get too specific a definition of "functionally related." It was suggested that we resort to report language to attempt that definition.

Would you agree with that from your experience?

Mr. **Walker**. If I might add, Mr. Chairman, we have been pressed for more than 12 years by the subcommittee in the other body to be precise about this issue. This definition was developed in large measure to answer fundamental questions that this legislation will encounter in the House of Representatives. For this reason this level of definition and precision, which has never been part of the predecessor legislation, is very desirable.

Senator DURENBERGER. What happens when a consolidation sunsets? We really don't know the answer to that question. Do the categoricals, in your view, somehow reappear in all of their original splendor, or are they repealed in the consolidation resolution?

Mr. STENBERG. It would be our hope that the categoricals would be brought into this sunsetting process, as well, rather than springing up like a hydra 4 years later. This is a matter that could be clarified in the subcommittee report.

Senator DURENBERGER. If you could give us some language which would make that quite clear, it would be very helpful to us.

Has ACIR examined the work of State and local government auditors to determine if they have the resources to do compliance audits for Federal grants? Could you begin with what you perceive a compliance audit to be and then respond to the original question?

Mr. STENBERG. Mr. Chairman, we confess a great deal of humility as we look at the auditing title. It is very technical and it is, in many respects, not our position to comment on its specific implementation.

In a more general sense, though, we found that, as a result of the assessment we have recently completed of circular A-102, title II would be certainly complementary with the single audit approach.

Senator DURENBERGER. I don't want to——

Mr. STENBERG. We did a year long assessment of the implementation of circular A-102. We found that OMB was making great strides in moving toward the single audit approach, disseminating information about A-102 and providing technical assistance to State and local auditors.

We found also, though, that there were some gaps, partly as a result of questions about the legal basis of circular A-102, and partly as a result of uneven Federal agency compliance and a tendency of some agencies to reinterpret its provisions and then to apply them to their grantees. We also found at the State and local level what could be regarded as a haphazard approach to auditing. In some places, auditors were literally stumbling over one another to get at the books of a city, county, or nonprofit grantees. In other places, an auditor was rarely seen. This sort of unevenness, where you have overauditing in some cases and perhaps not enough in others, we feel would be handled very effectively by title II.

The single audit approach and the division of labor, so to speak, between the Federal Government and the State and local governments and independent auditors in the title makes a lot of sense. With respect to the specific ways in which this would be carried out, there are others who are far better able than we are to comment on those matters.

Senator DURENBERGER. I was a little surprised earlier to hear the general revenue sharing program held up as a good example of compliance auditing. I have spent a couple of years working on general revenue sharing. I haven't seen much by way of compliance other than the study in which the Twin Cities has participated. Do you have an opinion as to any models which are available, such as the Treasury's—I think it was the Treasury's—compliance review or compliance audit of general revenue sharing?

Mr. STENBERG. I think that would be the best that we could recommend at this point.

Senator **Durenberger**. Are the crosscutting requirements a more burdensome aspect of Federal assistance than the hundreds of individual mandates which are found in the separate categoricals? Or, are they both equally detrimental?

Mr. **Walker**. That is difficult to answer because of the number of programs—specific requirements at this point. Both horizontal and vertical requirements are very burdensome.

Though verticals, specific to the program, can be difficult. Some of these ought to be reviewed in terms of substantive committees for modification. The real problem is the kind of confusion that emerges when administrators are, in effect, caught in a kind of schizoidical condition of being regulators and administrators.

This causes a kind of quandry when the range of concerns that now characterizes the job of implementing a Federal-aided program is heavily related to the 37-odd crosscutting applicable to only one of those programs

Some would say that, individually, all of the crosscutting requirements are commendable. I wouldn't say that, even. I would say a number of them aren't commendable at all and should be repealed soon.

Others would take exception to that remark.

However, it's only at this point in time when we are able to become conscious of this confusing administrative fallout effect and the real cost of compliance. For example, an Urban Institute study of five of the crosscutting and one vertical requirements in six jurisdictions found that what they received from general revenue sharing was required to pay for the cost of implementing these six mandates. In short, they were in a no-win position as far as GRS was concerned.

This is unconscionable. The requirements should be looked at in those terms.

Senator **Durenberger**. Let me ask you about joint funding simplification. Do you think the provisions in either of these bills will get the whole business of management assistance off the ground and moving?

Mr. **Walker**. I will turn to my colleague here. He can get much more enthusiastic about this title then I can. [Laughter.]

Mr. **Stenberg**. I think that there are some widely varied views about the desirability of joint funding, about the capacity of OMB to administer the act and about the commitment of the agencies to package their programs.

Joint funding is one component, but only one component, of an overall management improvement effort. It certainly dims, by comparison, with block grants, consolidation, regulatory reform, paperwork reduction, and the like. It is one of those process types of approaches that basically is pretty dull and boring and subject to a phenomenon that some like to call "MEGO"—my eyes glaze over.

As a result, it hasn't received much visibility. It hasn't received much attention. It's our view, having looked at the results of studies of joint funding by OMB, GAO, and others, that the process makes sense. It is basically a packaging effort. It is one important way in which State and local governments can put together combinations of programs and projects that respond to their priorities and their needs.

Joint funding is a facilitating process. It is not going to restructure Federal assistance, but it could well improve the administration of programs from the standpoint of making them more responsive to the needs of State and local recipients. This is something, given the current budget environment, that could be vital.

Senator **Durenberger**. Let me ask you, then, in the same vein, about integrated assistance and the portability provision. Would you consider that an emergency measure to get us through the consolidation of block grants? Or, do you think it serves some useful purpose over a longer period in the assistance process?

Mr. **Walker**. We think that it would be of extraordinary help in terms of the particular problems that the State and local folks are going to be facing this year, particularly if the structure of Federal assistance remains heavily fragmented, despite the administration's efforts.

Senator **Durenberger**. Thank you very much. I have no further questions.

I appreciate your testimony and responses.

[The combined prepared statement of Mr. Stenberg and Mr. Walker follows:]

ADVISORY
COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON D C 20575

STATEMENT

OF

THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

BY

CARL W. STENBERG
ASSISTANT DIRECTOR FOR POLICY IMPLEMENTATION

AND

DAVID B. WALKER
ASSISTANT DIRECTOR FOR GOVERNMENTAL STRUCTURE AND FUNCTIONS

ON

S. 45 THE FEDERAL ASSISTANCE REFORM ACT OF 1981

S. 807 THE FEDERAL ASSISTANCE IMPROVEMENT ACT OF 1981

BEFORE THE

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

April 22, 1981

Mr. Chairman, distinguished Members of the Committee, we are delighted to appear before you today to testify on behalf of the Advisory Commission on Intergovernmental Relations in support of the "Federal Assistance Reform Act" and the "Federal Assistance Improvement Act." The principles, policies, and practices embodied in S. 45 and S. 807 are no strangers to this Committee, since similar bills were considered beginning in 1978. We congratulate you, Chairman Durenberger, as well as Senators Roth and Sasser, for your leadership in this area.

This is ACIR's fourth appearance before the Committee to testify on pending federal assistance reform legislation. We do so with mixed feelings. The election of a new President and Senate, the pressing need to reorder federal budget priorities, and the strong dissatisfaction with the dysfunctional and congested nature of much of contemporary intergovernmental relations, suggest that we are witnessing an all too rare moment in history when much-needed and long overdue changes in the nature and extent of the federal government's role in the federal system can be made. The Committee has before it two pieces of legislation which would go a long way toward improving the design and implementation of federal assistance and reducing the high overhead costs, paperwork burdens, and administrative headaches that have been associated with grants-in-aid in the past. Both of these bills contain provisions that are consistent with the Administration's federalism agenda, and carry out recommendations contained in studies conducted by the Office of Management and Budget, General Accounting Office, and ACIR. And much of the contents of each bill has been subjected to basic questioning as well as "fine tuning" by the Committee over the past three years.

All of this is certainly encouraging, Mr. Chairman. It suggests that perhaps we are really in a new ball game as far as the politics of federal assistance reform are concerned. But perhaps not. Having listened to statements presented during the two previous hearings on S. 45 and S. 807 and recalling testimony on earlier versions, we are aware of concerns about certain features of the legislation. A number of these concerns are substantive or technical, and probably can be dealt with during the course of the Committee's consideration of the bills. Others, however, are more of a political nature and reflect the fears on the part of special interest groups, federal agencies, and Members of Congress that the old ways of doing business in the federal assistance field will be irreparably disrupted.

To many defenders of categorical aids, these bills are objectionable because, among other things, they would facilitate the elimination, merger, or streamlining of pet programs and regulations; reduce federal intrusiveness in recipient decision-making and give state and local officials more discretion; change the nature of accountability for the use of federal funds; and establish a strong central management presence in the federal government. The so-called "iron triangle" will fight hard to retain the old ways of doing business. And their collective strength should not be downplayed or dismissed. Recall their capacity during the 1970s to expand categorical aids and to encourage the "creeping conditionalism" phenomenon associated with the health, criminal justice, community development, and employment and training block grants as well as with general revenue sharing. Whether they succeed in this decade depends largely on the capacity and commitment of Members of the Committee to play a strong and sustained leadership role as far as federal assistance reform in the 1980s is concerned. We feel you have made an excellent start.

With this by way of background, Mr. Chairman, we would like to turn to the bills under consideration. Since the first four titles of both S. 45 and S. 807 cover the same general areas, we propose to comment on their desirability and feasibility in a comparative fashion. We will then turn to the remaining titles of each bill. In so doing, we will also try to respond to some of the concerns that have been expressed and suggest ways to deal with them.

Consolidation of Federal Assistance Programs

In the current budget climate where attention has been riveted on the Reagan Administration's efforts to cut, cap, or consolidate federal assistance programs, it would not be surprising to find some observers wondering whether this title reflects an idea whose time has come and gone. Nothing could be further from the truth.

The Administration unquestionably has launched a major assault on the federal assistance status quo. No program seems to be immune from scrutiny, and this is certainly commendable. The fifteen block grant proposals would merge some 130 categorical programs. Another 95 programs would be eliminated in the Administration's revised budget estimates. These initiatives, even if partly successful, would make a major dent in the more than 600 categorical aids on the books.

Yet, two important considerations should not be overlooked. First, many programs will not be affected by the block grant and budget revision actions due to their exclusion at the outset or as a result of Congressional desires not to alter them. Second, while more block grants may well be offered, like the current proposals, there is no assurance that the relevant Committees will expeditiously consider them and that they will get to the floor for a vote. In view of these factors, Title I of both bills could be a strong complement to the on-going efforts to reshape federal assistance.

Title I authorizes the President to submit plans for the consolidation of federal assistance programs to the Congress when he determines that these mergers will realize such objectives as giving recipients greater flexibility in adapting federal aids to their needs, promoting improved administration and planning, eliminating program redundancy, lessening overhead costs and burdens, and enhancing efficiency and effectiveness. Both bills provide a framework for the President to formulate and the Congress to consider grant consolidation plans. Appropriate ground rules are also established.

The nature and scope of the President's actions are well-defined. Basically he must name in the plan a single agency as the unit responsible for administering the consolidated programs, explain how the terms and conditions of the plan differ from those of the grants to be merged and the reason therefore, and specify an expiration date. The President must deliver his plan to both Houses of Congress on the same day and while they are in session. A 30-day grace period must separate the delivery of plans dealing with the same functional area, and not more than three consolidation plans may be pending at one time before a committee of primary jurisdiction. Programs not functionally related cannot appear in the same consolidation plan, federal agencies not previously responsible for one or more of the covered programs cannot be named to administer the merged ones, and a group or person not eligible for assistance under one of the grants contained in the plan cannot be made eligible as a result of consolidation.

A plan can take effect only when the President approves a resolution supporting the consolidation that is passed by both Houses of Congress within 90 calendar days of continuous session after the date of transmittal. The appropriate committees in the House and Senate must consider a consolidation plan, and report their recommendations to the full House and Senate for a vote. Before a resolution ith respect to a consolidation plan has been ordered reported, however, the President may make revisions.

Title I of each bill does not preclude the President from developing other grant consolidation or block grant proposals and submitting them for Congressional consideration. This could be done at any time. While some might believe that his approach would be more desirable from the standpoint of maximimizing the President's discretion over the candidates for consolidation and the terms and conditions under which programs would be merged into either larger categoricals or block grants, there are two distinct disadvantages. First, proposals developed in this fashion would have to run the regular legislative gauntlet, which in the past has proven to be a very effective means of stalling or killing consolidations. Indeed, many such bills do not progress beyond the introduction stage. Second, while the Reagan Administration has sought out consolidation opportunities with considerable zeal, future Administrations might well follow in the footsteps of most of their predecessors and be unwilling to examine and propose necessary changes in the structure of federal assistance. This reluctance has been in no small measure due to the desire of both Presidents and Congresses to play program politics, and satisfy or reward various interest groups with new or expanded categorical programs.

Last year, the Commission concluded in its review of the federal government's role in the federal system that the proliferation of categorical grants had contributed a great deal to the "congestion" of the processes of intergovernmental relations. By assuring that a systematic review of existing aid programs would occur on a regular basis, not merely during the life of one Congress or one Administration, Title I could serve as a significant tool in helping ensure continued attention to the appropriateness of federal involvement in various fields, in discerning functional areas where state and local governments or the private sector might play a greater part, and in pinpointing potential administrative cost savings. In an era of austerity at the national level - as well as in many state houses, county courthouses, and city halls -- it is difficult to overemphasize the significance of these reviews and the remedial actions they would bring about.

In comparing S. 45 and S. 807, Mr. Chairman, it is our view that the latter, the "Federal Assistance Improvement Act," contains a number of features that would better ensure the purposes of consolidation would be achieved. These include:

- The mandatory 60-day time limit for committees of primary jurisdiction to make recommendations to the House and Senate;
- The clearer definition of "functionally related programs," which draws upon the functional categories set forth in the Budget of the United States Government;
- The statement that a consolidation plan may accomplish one or more of six purposes rather than all of them;
- The deletion of the 60-day time period after the beginning of each session of Congress during which the President may submit consolidation plans for "fast track" consideration; and
- The requirement that plans not exclude any "purposes and goals," rather than eligible "person or group," under the programs to be consolidated.

To sum up, when the strength and persistence of the forces that in the past have maintained the categorical status quo, fostered new programs, and compromised block grants and general revenue sharing are taken into account, the need for Title I becomes paramount. By the same token, any pressures to make wholesale changes in federal assistance can be channeled through a process that enables their short and long-term implications for both grantor and grantee to be well understood and provides that timely action will be taken. The consolidation plan approach, therefore, represents a workable balance between the roles and responsibilities of the federal executive and legislative branches in the design of federal assistance.

Financial Management and Audit of Federal Assistance Programs

In January of this year, the Commission completed action on a year-long analysis of the "Fiscal Management of Federal Pass-Through Grants: The Need for More Uniform Requirements and Procedures." While the focal point of this effort was on experience under OMB Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, the Commission reaffirmed its 1977 recommendation that Congress take appropriate action to provide specific authorization for existing and future OMB circulars to achieve standardization, simplification, and other improvements in assistance management. In response to findings in the A-102 study that federal agencies tended to reinterpret or change the requirements in the Circular, that clear and consistent explanations of the nature and applicability of these requirements to state and substate agencies were lacking, and that the number of requests for information by agencies to satisfy their concerns about fiscal accountability had proliferated, the Commission recommended the following (in part):

> To provide the Office of Management and Budget with the statutory authority needed to promote more uniform and consistent application of the requirements in Circular A-102, and to create a greater awareness of the existing requirements on the part of those involved in drafting program legislation, the Commission recommends that Congress:
>
> (a) adopt grant reform legislation similar to the Federal Assistance Improvement Act of 1981 which would:
>
> (1) provide for improved coordination of audits and prescribe appropriate means for reimbursement,
>
> (2) standardize and streamline administrative requirements, and
>
> (3) consolidate federal programs which create unnecessary requirements for recipients...

In our judgement, Title II of S. 45 and S. 807 is a major step in this direction. Particularly significant is the provision which provides OMB with specific statutory authorization to "develop, establish, and maintain for use by all federal agencies standard accounting, auditing, and financial management policies, procedures, and requirements for the administration, accounting, and financial auditing of grants, contracts, cooperative agreements, and other forms of federal assistance to state and local governments, non-profit organizations, and federally recognized Indian Tribes." The directives issued by the Director of OMB are binding.

Title II also illustrates how Congress should address some of the problems involving audits. OMB is directed to prescribe effective means of coordinating federal, state, and local audits of grant programs. The authority granted OMB here, combined with its on-going efforts to implement and disseminate the information in Circular A-192, including Attachment P on audit requirements, are much needed improvements to achieve greater consistency in the performance of audits on recipients and subrecipients of federal assistance awards. In addition, the title also calls upon the Director of OMB to determine how audits of federal funds will be paid for -- an increasingly sensitive subject.

With respect to the technical aspects of this title, S. 807 contains a number of desirable changes which refine certain definition (especially "non-profit organization") and conform them to those in other titles, clarify the reimbursement procedures, and make consistent the use of terminology.

Administration of Generally Applicable Federal Assistance Requirements

Title IV of S. 45 and Title III of 807 deal with the administration of requirements that are generally applicable to federal assistance programs. Two basic types of requirements are involved here: those that are legislated in a single act which specifies across-the-board coverage, such as environmental protection and uniform relocation; and those that are fairly standard features of legislation authorizing individual aid programs, such as citizen participation, merit systems, and prevailing labor rates.

Most of these generally applicable requirements have been imposed by the Congress on recipients as conditions of aid in response to interest group pressures, to demands that national priorities be met, and to concerns about the willingness and capability of recipients to take these matters into account in the absence of a federal mandate or directive. Indeed, most state and local officials probably would agree that decisions on how to spend federal funds should not adversely effect the environment, historic sites, the rights of minority groups and handicapped individuals, and the like.

As this body of national policy requirements has grown, however, no official, no agency, and no Administration in Washington has even begun to consider their cumulative administrative and fiscal impacts. The research done by ACIR, OMB, the Federal Paperwork Commission, the General Accounting Office, and most recently the Task Force on Regulatory Relief indicates that where the policy requirements are enforced, they create significant problems for recipients.

The development and implementation of these federal regulations frequently occur in an uneven and confusing manner. With some requirements, the degree of flexibility accorded recipients varies from agency to agency, as does the extent to which a given set of regulations is responsive to state and local conditions and compatible with their financial and administrative systems. Generally applicable requirements are ineffectively coordinated, and hence there is a considerable amount of inconsistency among the regulations issued by different agencies in the same generic area.

Numerous plans and technical documents must be prepared to show grantor agencies how recipients will comply with the requirements. Special audits commonly are necessary to document that compliance in fact has occurred. And as has been pointed out by Administration officials, among others, many of the lengthy reports sent to Washington go unread. These requirements generate a great deal of paperwork, they consume considerable staff time, and they substantially increase administrative costs. One consequence is that fewer federal dollars are actually available for service delivery. Given the effects of inflation and federal aid cutbacks on already strained state and local budgets, this siphoning off of dollars for overhead rather than services has become cause for concern.

The high compliance costs associated with generally applicable requirements, therefore, have been a strong deterrent to some jurisdictions' participation in federal assistance programs. Interpretations of Section 504 of the Rehabilitation Act of 1973 and Section 16 of the Urban Mass Transportation Act of 1970 requiring recipients of federal mass transportation funds to maintain fleets that are completely accessible to the handicapped, for instance, have caused some transit authorities to think twice about whether they should continue to accept federal aid. The Uniform Relocation Act has been applied differently by separate funding agencies, and this has resulted in inequitable treatment of property owners. The Davis-Bacon Act stipulation, that recipients pay prevailing wage rates, has proven to be a disincentive for some jurisdictions interested in building low and moderate income housing, since the federal government's interest subsidy would be more than offset by the hike in grantee labor costs.

Title IV of S. 45 and Title III of S. 807 respond to these problems in an effective, workable way. The President is authorized to designate a single agency in a number of specified areas to establish standard rules and regulations and to monitor the implementation by federal assistance agencies. The Congressional intent that such regulations be "simple and clear" is a significant concomitant to standardization, for simplification of complex rules is clearly as important as the need for uniformity. Procedures are spelled out to ensure that efforts to achieve uniformity are implemented in a timely manner, and that changes requiring legislative action will be called to the attention of the Congress.

Some have contended that standardization along these lines cannot or should not be done. Spokesman for certain interest groups have argued that such action would dilute the intended effect of these national policy requirements. Some state and local officials, on the other hand, are concerned that standardization would give these interests and their allies in the Congress and the federal bureaucracy an opportunity to press for even more stringent national conditions. Still others have argued that standardization is essentially an administrative process that should be handled by the executive branch rather than by the Congress.

We believe all these arguments are adequately handled in the bills. A three-tier approach is embodied in S. 45 wherein a designated agency coordinates the preparation and implementation of a standard and necessarily general set of regulations by an interagency task force, which is then refined and carried out by assistance agencies. S. 807 calls for a two-tier process, which does not rely on a task force. Both approaches strike a good balance between the need for a national minimum standard or level of effort and the need for a sufficient amount of agency flexibility. Given the mixed record of interagency bodies, however, our preference would be for the two-tier approach since it focuses rather than diffuses the standardization effort.

Turning to the second contention, the recent record demonstrates that a solely administrative approach is not the best way to bring about improvements in assistance management. The Carter Administration's attempts to standardize regulations in the civil rights, environmental quality, and citizen participation areas showed that executive branch action alone was insufficient to reconcile the inconsistencies encountered here. Many of these rules, after all, are of statutory origin and hence require legislative remedy. Again, S. 45 and S. 807 permit an executive branch solution where it will suffice and require Congressional involvement where that is found to be necessary.

A key feature of the title is the authorization of certification procedures as a means of streamlining the regulatory process. The heads of federal departments and agencies are authorized to grant waivers to state and local governments which certify that their laws, regulations, directives, standards, reporting requirements, and compliance monitoring and enforcement procedures are "at least equal to" (S. 807) or "the same as" (S. 45) those required by the standard rules and regulations. Certifications potentially could provide signficant relief to state and local governments which now are suffering from burdensome paperwork and excessive administrative cost headaches.

A third provision of this title calls for the modificiation, or the elimination, of those national policy requirements that are found to be excessively expensive, unnecessarily complex, or clearly inappropriate. In such cases, amendatory or repeal proposals would be forwarded to the Congress by the President.

Finally, and importantly, the title calls for a prominent Office of Management and Budget role in monitoring implementation of this title. Such a central management authority is conspicuously absent from our contemporary aid system and is vitally needed to assure proper federal agency understanding and execution of the various aspects of this title. In this connection, we favor the approach embodied in S. 807, which assigns OMB a more significant central management role by developing dispute and conflict resolution procedures, testing and evaluating certification techniques, preparing and publishing an annually updated catalog of national policy assistance standards for generally applicable requirements as well as agency implementing regulations, and suspending for 180 days implementation of national policy assistance standards that will have dysfunctional consequences.

Besides these differences, S. 807 also contains a number of other specific improvements over the contents of S. 45 including:

- An expanded statement of purpose covering elimination of requirements that are unnecessary, infeasible, or inappropriate;
- A definition of "federal assistance" that is consistent with that used in the consolidation title;
- A shorter time period (one year versus two years) for the development of national policy assistance standards;
- Clarifying language that a single designated agency would prepare national policy standards in each subject area;
- The provision of a one year period before certification processes would get underway to allow sufficient time for OMB and assistance agencies to develop procedures and guidance; and
- Elimination of the statement that national policy assistance standards shall not diminish or detract from a wide range of statutory, as opposed to constitutional, prohibitions of various kinds of discrimination.

Joint Funding Simplification

Title III of S. 45 and Title IV of S. 807 would make a number of amendments to the Joint Funding Simplification Act of 1974, which was renewed without significant change by the Congress last December. Joint funding, of course, is a management tool that was designed to permit recipients to administratively group grants used for the same project. Until recently, the process has been little used. Reports by OMB and GAO, however, present strong evidence that where joint funding is given adequate support it does work and can realize substantial cost savings and improve serve delivery.

Since not much time has passed since the renewal of the 1974 legislation, a case could be made for not taking action until more experience under the Act can be amassed and assessed, especially in light of the upsurge in joint funding activity over the last two years or so. This view in particular would call for a postponement of consideration of the "Integrated Grant Development" title of S. 45. At the same time, we understand that OMB plans to revise Circular A-111, which provides guidance on joint funding arrangements. S. 807 contains a number of specific language changes in the original law which could well lead to incremental, but important, improvements in the way the act is implemented. In particular, the changes from "may" to "shall" language in key places should help bolster federal agency participation, kindle state and local government interest, and perhaps enable OMB to play a more authoritative role. The title also would establish an integrated management fund which would account for funds as though they were derived from a single federal assistance source. This would help reduce recordkeeping and the associated administrative costs borne by recipients.

While some might say, Mr. Chairman, that joint funding is more a paper shuffling process than a meaningful management improvement effort, our belief is that the Act and Circular A-111 should be given another chance and that greater statutory direction should be given as to federal agency participation and OMB oversight. While application packaging dims in comparison with grant consolidation and block grants as far as the overall impact on "decongesting" the federal system goes, nevertheless, if properly conducted such arrangements can be a useful part of an overall assistance management improvement effort.

Integrated Assistance

Title V of S. 807 provides a potentially significant approach to improving the effectiveness and efficiency of federal assistance programs by authorizing applicants to submit a plan for transferring funds among various programs in a subfunctional category by up to 20 percent of the amount it received in the base fiscal year for the covered programs. Development of an integrated program plan should give state and local officials, in particular, an opportunity to review their priorities and allocate federal funds accordingly. This flexibility could well be crucial if proposed block grant legislation in functionally related areas has not passed by the end of the fiscal year, and recipients are confronted with a "fewer funds, same strings" dilemma. In short, integrated assistance could be a vital safety net for some recipients that would enable them to continue services to needy groups or individuals, or to provide for an orderly phase-out of programs for which federal funding will cease. Furthermore, from the accountability standpoint, there are sufficient guarantees in the bill that federal agencies as well as Congressional committees will be adequately informed as to the planned and actual used of integrated assistance.

Miscellaneous Provisions

In closing, Mr. Chairman, we would like to comment briefly on the various miscellaneous amendments that are contained in S. 45 and S. 807. The "Federal Assistance Improvement Act" contains three clearly needed changes -- to clarify the meaning of the "single state agency" waiver section of the Intergovernmental Cooperation Act of 1968, to establish a standard maintenance-of-effort approach, and to indicate Congressional intent with respect to state law or practice in handling federal assistance.

With regard to the first area, the single state agency requirement was originally placed in federal grant legislation to provide an administrative focal point for the particular program to insulate it from other state services. Today the states possess highly sophisticated agencies; isolation is an administrative problem; and state politics are no better or worse than those at the national level. Hence, the single state agency requirement is no longer called for. In fact, the requirement presently has an undesirable side effect of diluting the administrative authority of elected officials and strengthening the hands of non-elected program specialists found at all levels of the federal system.

The Intergovernmental Cooperation Act contains a single state agency waiver intended to resolve this matter. The persistence of this requirement, however, and its latter day adaptations - as exemplified by Florida's on-going experience with its Vocational Rehabilitation Program - demonstrate the need for a strengthened waiver provision. The language in Title VI of S. 807 is intended to meet the District Court's concerns in the Florida vocational rehabilitation case, and in so doing to encourage greater federal administrative use of the single state agency waiver provision. This section, like the consolidation title, strikes a blow against aribitrary federal intrusion into the management and headquarters/field relationships at the state and local levels. It seeks to curb inappropriate federal meddling in the wholly administrative concerns and actions of recipient jurisdictions.

Secondly, there is a need to standardize "maintenance-of-effort" requirements. The ACIR's study of the intergovernmental grant system identified 84 grants in 48 functional areas having "maintenance-of-effort" or "non-supplant" requirements. These provisions are applied to assure that state and local governments do not use federal assistance to reduce their own expenditures or as a substitute for their own revenues. Problems arise, however, because many such requirements are ambiguous and vary widely from program to program. These inconsistencies result in confusion, improper compliance, and wasted staff effort at the recipient level. Title VI of S. 807 would rectify these problems by first repealing all such requirements, and then establishing a standard maintenance-of-effort provision to be used whenever Congress desires to ensure that the granting of federal assistance will not reduce relevant state and local expenditures.

Thirdly, Title VI covers the somewhat delicate area of state oversight in a way that recognizes the prerogatives and responsibilities of both the legislature and the governor in the application for and acceptance of federal assistance. This amendment supports the basic constitutional concepts of fiscal accountability and purse-string control by elected officials rather than by bureaucrats. The federal government should not intrude into these legitimate areas of state decision-making.

Turning to S. 45, while we are aware of the intent behind the amendments on "Information on Federal Assistance" and "Procedural Safeguards and Regulatory Flexibility," we question their necessity in light of experience with OMB's Federal Assitance Award Data System and on-going agency notification practices. With respect to the studies of alternative approaches to service delivery and administrative costs, we would raise a point about the desirability of ACIR conducting the former in light of its current research commitments and the excellent work already done in this area by organizations like the Urban Institute. With respect to the administrative costs study, we would only caution that this is an exceedingly complex field both methodologically and substantively, as past efforts by OMB, GAO, and GSA have revealed. Hence, the research effort needs to be carefully designed and adequately staffed and funded.

* * * * * *

Thank you again for the opportunity to appear before you today. We stand ready to respond to any questions that you would like to put to us.

Senator DURENBERGER. Our next witness will be Mr. John Cosgrove, legislative director of AFL-CIO. John is here today to testify concerning the grant reform legislation. John, we welcome you.

TESTIMONY OF JOHN COSGROVE, LEGISLATIVE DIRECTOR, AFL-CIO

Mr. COSGROVE. Mr. Chairman, I am John Cosgrove, legislative director of the AFL-CIO Public Employee Department. As such I appreciate the opportunity to appear before the subcommittee on this important consideration that is before you. I have given an amendment to the advance copy to the staff.

On behalf of the 34 national and international unions comprising the AFL-CIO Public Employee Department, I am happy to testify today on legislation intended, among other things, to simplify the administrative requirements for Federal assistance payments to State and local governments.

Our unions, composed of over 2 million members who work at every level of American Government, are, of course, vitally interested in intergovernmental relations and the now well-established practice of Federal aid to the other levels of government.

I think perhaps as much as this subcommittee—if I may say so—our members are aware of not, perhaps, the layer cake character of the Federal-State relationship, but, perhaps, the marble cake—as some have referred to it—interrelationship between the different levels of American Government.

A primary concern of ours, going back to the beginning of Federal revenue sharing, is that funds raised by the Federal Government carry with them the obligation and responsibility for the other levels of government to conform to the relevant national labor and social policies. Otherwise, we would have far more than simply Federal aid; we would have, instead, a patchwork crazy quilt of varying and contradictory policies where there ought to be a national policy. This is our primary concern, particularly since, in recent years, the Federal policies have more nearly served the interests of social justice than have those of many of the States.

Specifically, we would hope that social standards, such as equal employment opportunity and affirmative action, would be preserved as a national requirement for governmental entities which accept Federal funds. We would hope that the labor standards, which are usually attached to Federal grants, would be served as we have come to consider normal and correct. If block grants are, as distinguished from categorical grants, a subterfuge for the resurrection of untenable States rights, then we would particularly oppose them.

S. 45's section 1004 apparently limits consolidation of Federal assistance programs to those functionally related and, more importantly, prohibits amending substantive law by executive action. This is, of course, an important safeguard.

Our concerns, expressed above, seem to be protected by section 204(c)(3) to preserve Federal rights. I refer to the earlier introduced bill, S. 45.

It is probably desirable that section 303(1) excludes revenue sharing and local guarantees from this bill.

There are two caveats which we would express to the subcommittee. First, there is not clearly stated, for State/local recipients of Federal money, a requirement for full "maintenance of effort." It might be argued that this will be required in any case as Federal aid is to be drastically limited from the reports we hear. However, as a general principle, it is better that this policy be reiterated.

Our second concern is with respect to section 702 and whether the President would be empowered to designate a Federal agency to coordinate ". . . preparation and implementation of national policy assistance standards . . ." Tying this to section 703(a), the President will designate such an agency with sweeping powers regarding labor practices as spelled out, public employee standards, equal services requirements, equal employment requirements, access to Government information, procurement standards, planning requirements, financial and administrative requirements and environmental protection requirements. The balance of section 702 suggests that the mission of the program or the agency might be construed to override the Federal standards.

That gives us some pause.

It will be vital that this interpretation be rejected, in our judgment, in any favorable subcommittee or committee report on S. 45 or another bill, so that the congressional intent to preserve the safeguards remains the same. We hope that is the congressional intent.

S. 807's section 1004 would appear to provide safeguards. However, this bill also suffers from several of the problems which we pointed out above regarding S. 45. Indeed, section 703(a) calls into question even more the general requirements that follow Federal funds, such as citizens' participation requirements which we consider important. We have no desire to appear negative in this business, certainly, even though "sunset" appears as one of the possibilities. We have testified against sunset, as a general proposition, thinking that it has greater difficulties and problems. We sympathize generally with the idea of simplification and expedition of relationship between the governments. While we have no desire to appear negative and we are aware of the leadership of this subcommittee in intergovernmental relations, we would be remiss if we did not call your attention to the reservations that we do have. Thank you for this opportunity to testify on this important subject.

Senator **Durenberger**. Thank you very much, John. I don't know if you were here earlier to hear OMB testify. They indicated a substantial degree of discomfort with several of the main sections of the bill, which might, in some way, tie their hands in accomplishing some of their own objectives. Are you personally more comfortable with the status quo—with the power which the President presently has with regard to consolidation? Or, would you prefer that we move in the direction of giving legislative definition to that?

Mr. **Cosgrove**. I think the answer that I would have to give is that there is a need for legislation. But the problem runs to—a very basic one that has been very large in the Federal-State relationship scene and the American Government scene. To my personal knowledge it's been since 1960, this attempt to rationalize and make more effective the relationship between the governments, particularly with regard to the financial flow. All sorts of devices were used, starting back in 1961 or 1962—way back now, with the Federal Executive Boards. That was intra-Federal. That was more Federal than it was State. There were various devices within the Executive Office of the President. Various individuals, from time to time, were assigned to work with the Governors or with the mayors or with both, to meet them—the mayors and Governors—in their demands. The problem is one that has been around for a long time. I am not sure any of us know the answer. I think some degree of uniformity in the administration has merit. The overriding concern we would have would be that none of these mechanical devices, none of these new procedures—however valuable and needed they might be—should be allowed to infringe upon the responsibility to the defense of human dignity, for general welfare, which is the purpose of the Government. We don't agree with the premise, if I may say so, Mr. Chairman, that the result of any particular election one might refer to indicates a turnback from the course of social reform that was begun in this country in 1933. It has been decelerating out with various peaks and valleys at various times.

When something like approximately only half of the people vote, and maybe a little over half of these vote for one of the candidates for President, we consider this a very thin mandate, if one at all. We do not see a mandate for any radical revolution in the social programs of this country.

So, therefore, we would think that the primary consideration would be the preservation of these social and economic gains of the American people—particularly for those least able to fully care for themselves, with the least opportunity. That is the overriding consideration, albeit that there will be difficulties in administration.

Senator Durenberger. Let me ask a question from a different viewpoint. If you had an opportunity to look at it from the administration's view, do you find any of these block grant proposals affecting people in their personal goals, for example?

Mr. Cosgrove. Yes, we are particularly concerned about AFDC [Aid for Families with Dependent Children], and we think of the major cuts proposed for education. Let me comment on both. First, with respect to AFDC, we view the Aid for Families with Dependent Children as being particularly burdensome in some of the States as compared to other States. People go to the former States as domestic—if you will—or internal refugees within America to get a better break—a better opportunity—from States where, under the guise of States' rights, they were deprived of a decent level of income as in Puerto Rico or in some of the States. So, therefore, it is a national problem and not a State problem, but can only be defined and solved nationally.

With respect to education, ever since 1957 there has been—and immediately before that a Gallup poll indicated support of—previous Federal aid to education. It has been increased, without regard to the party in the White House and without regard to the majority in the Senate, from the equipment and library assistance onward. It started with scientific hard goods pretty much—laboratory equipment initially in the late fifties—but it gradually expanded. Now it is a major share, both general revenue sharing money and specific aid to education—secondary and elementary as well as college. That whole area is now being cut.

This type of categorical cut is extremely disturbing to us. It suggests a retrenchment, a false economy. It suggests that the investments allowed to be made are, instead, viewed as indefensible expenses. So we are deeply concerned about these. I think that it is bad that they are cut now. On the question of should they be cut or not cut categorically or cut or not cut on the consolidating basis, the people lose in either case if the cuts are injudicious.

We would hope, therefore, that would not be done. We have confidence that the Congress, in due course, will see that there should be legislation, and that not all knowledge flows from either the White House, the OMB, or the Budget Committees of the two Houses. In fact, the appropriate committees and subcommittees should act on the programs of which they have the most knowledge. We would hope that this would be the course which will be pursued in this House.

Senator DURENBERGER. Thank you very much for your testimony.

Mr. COSGROVE. Thank you, sir.

Senator DURENBERGER. Our last witness will be from the National Society of Public Accountants, Mr. Leon Robin, who is Pennsylvania State Director for the National Society of Public Accountants. We welcome you. We have your written testimony, and we will accept that in full as part of the record.

You may summarize it if you wish.

TESTIMONY OF LEON ROBIN, PENNSYLVANIA STATE DIRECTOR FOR THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS, ACCOMPANIED BY R. CHARLES HARKER, DIRECTOR OF GOVERNMENT AFFAIRS

Mr. ROBIN. Thank you, Mr. Chairman. May I introduce to you the National Society of Public Accountants' director of Government affairs, Mr. R. Charles Harker. I greatly appreciate the opportunity to speak. If I appear nervous, I am nervous.

Senator DURENBERGER. The mikes were off. Now they make people nervous.

Mr. ROBIN. NSPA represents over 17,000 individual professional practitioners throughout the United States. Our members provide auditing, accounting, tax and management services to more than 4 million businesses throughout the country and are vitally concerned with the issues and problems which affect small businesses particularly.

Thus, in general terms, we applaud the purposes of S. 45 and S. 807, namely, to promote efficiency in the audit of Federal programs, to consolidate such programs where feasible and to simplify requirements.

We are concerned, however, with a particular policy which the enactment of S. 45 or S. 807 would stamp with the imprimatur of law. Namely, we are concerned with the definition of the term "public accountants" as it currently appears in title II, section 202(2) of both bills.

Title II, section 202(2) of both bills as currently drafted would have the effect of restricting to certified public accountants and to those public accountants licensed on or before December 31, 1970, the financial audits of Federal assistance programs.

This restriction is the result of a 1970 GAO policy memorandum—B-148144—reaffirmed in 1975, adopted by OMB in Circulars 102 and 110 which states that only certified public accountants and those public accountants licensed on or before December 31, 1970, should be engaged to perform financial audits of governmental and federally chartered, financed or regulated entities.

The effect of this policy has been to arbitrarily deny potential clients or to take away existing clients from those noncertified public accountants who are licensed after 1970, and who under State law may perform audits. The economic effect of this policy on public accountants is disastrous. As small business people, the loss of clients or the inability to expand their practice into this area has serious ramifications.

In effect, this policy forces small businesses or local governmental entities who receive Federal funds to discontinue the services of their public accountant and engage the services of a CPA who, in most cases, charges a significantly higher fee. This cost is then passed on to the taxpayer or the consumer in the form of increased taxes or prices.

In addition, the constitutional and antitrust implications are substantial. The policy is arbitrary and discriminatory. It violates the fifth and fourteenth amendments in that it denies a citizen the right to earn a living, it abrogates his freedom to contract and it is a taking without due process. Further, this policy is anticompetitive, monopolistic, and denies the public a choice of an accountant of his/her selection.

The most heinous aspect of this policy is that no factual evidence has ever been put forth which supports the contention that public accountants are any less qualified than certified public accountants. One only needs to read the Wall Street Journal to know what I am referring to. One only needs to go to the State accountancy laws which license both CPA's and PA's to find that there is absolute equivalency in State laws between the two groups, and that either a CPA or a licensed public accountant can audit without restriction any private, public or governmental corporation, organization, department or agency. That is, noncertified public accountants who were and are being licensed after 1970 are given equivalency by statutory authority with CPA's. This indicates that the various State legislatures and licensing boards recognize the capability of those noncertified public accountants to be equal to that of CPA's.

Another important point is that the cut-off date significantly reduces the number of competitors eligible to bid for such a program. This has the effect of increasing the cost of the services to the Government at a time when inflation is increasing and the President, the Congress, and the American public are seeking ways to reduce Government costs and spending.

It is significant to note footnote 439 of the statement of basis and purpose of the FTC's 1979 publication entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," which states:

The Commission does not wish to prevent individuals deemed qualified by their States from preparing the financial information required by this rule. For that reason, the Commission is requiring "certified or licensed public accountants" to prepare the financial data prescribed by S. 435 1 (a) (20), if State law so allows.

Further, economists and others agree that restraints on entry into a market occupation or profession primarily benefit those who are regulated rather than the public. Therefore, a deregulation environment is best. This philosophy is exemplified by Justice and FTC in their actions regarding professional advertising and solicitations.

All of this goes to support our position that the GAO auditor qualification policy—which now appears in S. 45 and S. 807—is the sort of unreasonable, unjustifiable and inflationary direct governmental intrusion into the competitive market that other Federal agencies and Congress are trying to eliminate. Therefore, it is difficult to understand this position in view of the fact that two of the Nation's most illustrious financial watchdog agencies recognize State licensed public accountants and that comparatively few enforcement actions for substandard work have been brought against PA's.

NSPA now appeals to Congress and specifically to this subcommittee to end this arbitrary, unfair and unjustified policy.

Furthermore, the State legislatures have insured that all licensees shall maintain their professional qualifications and capabilities through such mechanisms as continuing education. The boards of accountancy in "dying class" States are also provided with revocation and suspension powers to enforce the level of quality of professional practice it requires from its licensees.

In summary, the GAO has recognized that noncertified public accountants are qualified to perform audits as witnessed by its acceptance of those licensed before the cut-off date. Moreover, a number of States continue to examine the proficiency of the noncertified public accountants for the purpose of licensing or registering them to engage in the practice of public accountancy.

Consequently we request that title II, section 202(2) of S. 45 and S. 807 be amended to read:

"(2) The term "public accountants" means

"(a) persons who are certified public accountants, certified by a regulatory authority of a State; and

"(b) persons who are licensed or registered public accountants, licensed or registered by a regulatory authority of a State."

This amendment would safeguard the rights of those public accountants who are recognized by their State legislatures to practice public accountancy while at the same time would preclude those who have not met the prescribed standards from participating in the audits of Federal assistance programs.

Mr. Chairman, why should I, who have been in practice over 40 years be prohibited from auditing these Federal programs? I'm a Temple University graduate, class of 1937. I have a small office with a partner and three members on the staff. I come from a permissive State, the State of Pennsylvania, which did not require or provide for any regulatory licensing before 1976. According to law, PA's and CPA's had exactly the same rights of practice.

PA's were able to give opinion letters, able to audit. We did everything that CPA's were permitted to do. In 1976, I was president of the Pennsylvania Society of Public Accountants. In that year, the Pennsylvania legislature passed a licensing law, supported by the Penn Institute of Certified Public Accountants in cooperation with the Pennsylvania Society of Public Accountants. Pennsylvania then became a licensed State.

We have continuing education, as do the 13 other States that have, since 1970, been involved with regulatory agencies to become licensed. There are over 13,000 people, persons, who have, during these past 10 years, become licensed public accountants through regulation of their States. Why should they be denied the opportunity of being able to audit federally funded programs and grants? They are being discriminated against at this particular time.

We, in the State of Pennsylvania, require 40 hours of annual compulsory eduation. All the other 13 States have similar requirements. Most of those States require 40 hours, a few 26 hours, and a few 30; but, on the whole, they all require this continuing education. It is my belief that, in the last 10 years, there are more PA's who are qualified to do the work than those, prior to 1970, who came into regulation before the institution of continuing mandatory professional education.

Thank you, Mr. Chairman, for permitting me to address you.

Senator DURENBERGER. Thank you very much for your testimony and the personal side of the testimony, as well. It is very much appreciated.

Can you tell me, using the State of Pennsylvania as an example, what is the difference in the kind of accounting work the PA is licensed to do versus the CPA?

Mr. ROBIN. No difference whatsoever.

Senator DURENBERGER. Do you, yourself, engage in the kind of audits that are contemplated by S. 45 and S. 807?

Mr. ROBIN. I have never been given the opportunity to be able to engage in them because I was not licensed prior to 1970. I was not able to because of the Permissive State Law at that time.

Senator DURENBERGER. Did you say there are now 13 licensed States in the country?

Mr. ROBIN. Yes, sir, there are probably 19, but there are 13 that have continuing licensure, which represents about 13,000 people who have become licensed during this period in time.

Senator DURENBERGER. Is there any difference in the licensing procedures in terms of the examination requirements in Pennsylvania between a CPA and PA?

Mr. ROBIN. No, no. As a matter of fact—if I might comment—when the CPA law first became a law in Pennsylvania, back in the early 1900's, they then had a grandfather clause to also take in the CPA's. They became CPA's. From that particular point on, they then had to take an examination. However, the examination was administered by the Pennsylvania Society of CPA's, not the national, but their own. Only in the last few years did they take the national examination. Prior to that it was given by the State of examination.

Senator DURENBERGER. You mean a State board of accountancy?

Mr. ROBIN. Yes, sir, a State board of accountancy.

Senator DURENBERGER. How many States have a State licensing board of accountancy?

Mr. ROBIN. I think every State that has regulations at the present time has a State licensing board of accountancy. We in the State of Pennsylvania have several PA's as well as CPA's on the board, and we have several consumer advocates whom the Governor has put on the board as well.

Senator DURENBERGER. Do you have any idea of the impact of the cutoff date in terms of the number of people who would be affected nationwide?

Mr. ROBIN. If you go back to 1970, I don't think you have too many people involved at the present time, because most of those States have regulatory licensing—New York, Ohio and possibly a few others. They had a dying class regulation, which meant most of those people were passed off or will be passed off in the next 5 or 10 years. That is why I feel those of us licensed since 1970 should be able to continue on. We may all die off in another 20 or 30 years and then there will be no more PA's who will be able to do this at the present time.

Senator DURENBERGER. Thank you very much for your testimony. It will be part of our consideration in marking up this bill.

Mr. ROBIN. Thank you very much.

[The prepared statement of Mr. Robin follows:]

PREPARED STATEMENT OF LEON ROBIN

Mr. Chairman, Members of the Subcommittee, my name is Leon Robin and I am Pennsylvania State Director for the National Society of Public Accountants (NSPA). I am accompanied by Mr. R. Charles Harker, NSPA Director of Government Affairs, and I greatly appreciate the opportunity to appear before you today on behalf of NSPA to address myself to certain provisions of S.45, the Federal Assistance Reform Act of 1981, and S.807, the Federal Assistance Improvement Act of 1981.

NSPA represents over 17,000 individual professional practitioners throughout the United States. Our members provide auditing, accounting, tax and management services to more than 4 million businesses throughout the country and are vitally concerned with the issues and problems which affect small businesses particularly. Thus, in general terms, we applaud the purposes of S.45 and S.807, namely to promote efficiency in the audit of federal programs, to consolidate such programs where feasible and to simplify requirements.

We are concerned, however, with a particular policy which the enactment of S.45 or S.807 would stamp with the imprimatur of law. Namely, we are concerned with the definition of the term "public accountants" as it currently appears in Title II, Section 202(2) of both these bills.

Title II, Section 202(2) of both bills as currently drafted would have the effect of restricting to certified public accountants and to those public accountants licensed on or before December 31, 1970, the financial audits of federal assistance programs.

This restriction is the result of a 1970 GAO policy memorandum (B-148144), reaffirmed in 1975, adopted by OMB in Circulars 102 and 110 which states that only certified public accountants and those public accountants licensed on or before December 31, 1970 should be engaged to perform financial audits of governmental and federally chartered, financed or regulated entities.

The effect of this policy has been to arbitrarily deny potential clients or to take away existing clients from those non-certified public accountants who are licensed after 1970, and who under state law may perform audits.

The economic effect of this policy on public accountants is disastrous. As small business people, the loss of clients or the inability to expand their practice into this area has serious ramifications.

In effect, this policy forces small businesses or local governmental entities who receive Federal funds to discontinue the services of their public accountant and engage the services of a CPA who, in most cases, charges a significantly higher fee. This "cost" is then passed on to the taxpayer or consumer in the form of increased taxes or prices.

In addition, the Constitutional and antitrust implications are substantial. The policy is arbitrary and discriminatory. It violates the fifth and fourteenth amendments in that it denies a citizen the right to earn a living, it abrogates his freedom to contract and it is a "taking" without due process. Further, this policy is anticompetitive, monopolistic,and denies the public a choice of an accountant of his/her selection.

The most heinous aspect of this policy is that no factual evidence has ever been put forth which supports the contention that public accountants are any less qualified than certified public accountants. In fact, the record is replete with evidence to the contrary. One only needs to go to the state accountancy laws which license both CPAs and PAs to find that there is absolute equivalency in state law between the two groups, and that either a CPA or a licensed public accountant can audit without restriction any private, public or governmental corporation organization, department or agency. That is, non-certified public accountants who were and are being licensed after 1970 are given equivalency by statutory authority with CPAs. This indicates that the various State legislatures and licensing boards recognize the capability of those non-certified public accountants to be equal to that of CPAs.

How can the Federal government justify denying the non-certified public accountant licensed after December 31, 1970, a right and recognition guaranteed by the state legislature? We recognize the arguments of preemption and that a matter may be peculiarly Federal; however, what makes the Comptroller General a better judge of professional qualifications than a state legislature?

NSPA bases its position on the fact that the 1970 cut-off date discriminates against a capable and qualified group of practitioners who happened to have received their license after December 31, 1970. In this regard, NSPA has surveyed those State Boards of Accountancy who have licensed "public accountants" since 1970. Based on the response from the State Boards, we have determined that over 12,000 public accountants have received a license since December 31, 1970. This is an overwhelming number of persons who are precluded from eligibility to perform financial audits for federally-funded programs or organizations, and thus, are discriminated against by the GAO policy. This discrimination is even more apparent when one notes that those same persons are allowed, under state law, to perform audits, yet GAO has opted to preempt such state laws without due process or apparent justification and without any empirical data or evidence to support that position. S.45 and S.807 would perpetuate this injustice through their definition of "public accountants."

Another, and equally important, argument is that the cut-off date significantly reduces the number of competitors eligible to bid for such a program. This has the effect of increasing the cost of the services to the government at a time when inflation is increasing and the President, Congress and the American public are seeking ways to reduce government costs and spending.

A third argument, and no less important, is that there has been no empirical evidence or showing that state licensed public accountants are not technically qualified to perform the required work.

In this regard, we have attempted to gather data and information from the Pension and Welfare Benefits Program Administrator, the Controller of the FDIC and from the Chief Accountant of the Securities and Exchange Commission on the quality and competency of licensed public accountants vis-a-vis certified public accountants.

In response to our request for information, we received a letter from the Assistant Chief Accountant for the SEC and from the Controller of the Federal Deposit Insurance Corporation. Both the SEC and the FDIC responded that they do not differentiate between PAs and CPAs, and instead use the term "independent public accountant" which includes both. (See Rule 2.01 of SEC Regulations S-X and 12 CFR 335.7 (d) (3) relating to the FDIC.)

Further, according to the SEC, of the 10 public accountants who submitted financial statements as auditors for registrants required to file Form 10-K with the Commission, only one enforcement action was brought against a licensed PA during the last three years.

During a Freedom of Information review of documents at the Federal Trade Commission's Chicago Regional Office in December 1978, we noted that the Arizona State Board of Accountancy disciplined 15 CPAs and 1 PA for non-compliance with certain auditing standards and accounting principles, and likewise, that the New York State Board for Public Accountancy disciplined 5 CPAs and 1 PA for substandard practice. While this evidence is not conclusive, it certainly indicates that on both the State and Federal level, licensed public accountants are no less competent than certified public accountants.

In addition, it is significant to note Footnote 439 of the Statement of Basis and Purpose of the FTC's 1979 publication entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures which states:

> "The revised proposed rule required that "certification" be by an independent certified public accountant." (See Appendix C). The National Society of Public Accountants pointed out, at R.V. 1981-2, that in many jurisdictions, "public accountants" are permitted to do anything that "certified public accountants" are permitted to do except use the adjective "certified" in front of their name. The Commission does not wish to prevent individuals deemed qualified by their states from preparing the financial information required by this rule. For that reason, the Commission is requiring "certified or licensed public accountants" to prepare the financial data prescribed by S.435 1 (a) (20), if state law so allows. (Emphasis added)

This evidence overwhelmingly supports a recision of the GAO memorandum and those similar requirements set out in OMB circulars 102 and 110 and the audit guides of all the affected federal departments and agencies.

An article by former Comptroller General Statts in the April 1979 issue of the Journal of Accountancy is entitled "Grant Audits: A New Vista for CPAs." This coupled with the fact that the Treasury Department's Office of Revenue Sharing distributed more than $1.7 billion dollars in payments to 37,549 state and local governments in July 1979 emphasizes the rapidly expanding nature of this type of work for independent accountants. To arbitrarily deny it to a competent and capable segment of the accounting profession is unconscionable.

By forcing the small, independent accountant to lose these types of clients or to deny him access to this type of work is to deny him his constitutional right to earn a living and to compete fully in the American free-enterprise system.

Congress, the Justice Department and the Federal Trade Commission all advocate that the less direct governmental manipulation of market forces, the more competitive it becomes, and the less costly it is to the consumer. Free competition has also been shown to improve the quality and innovation of the goods and services offered. Deregulation of the airlines is a good example.

Further, economists and others agree that restraints on entry into a market occupation or profession primarily benefit those who are regulated rather than the public. Therefore, a deregulation environment is best. This philosophy is exemplified by Justice and FTC in their actions regarding professional advertising and solicitations.

All of this goes to support our position that the GAO auditor qualification policy (which now appears in S.45 and S.807) is the sort of unreasonable, unjustifiable and inflationary direct governmental intrusion into the competitive market that other federal agencies and Congress are trying to eliminate. Therefore, it is difficult to understand this position in view of the fact that two of the nation's most illustrious financial "watchdog" agencies recognize state licensed public accountants and that comparatively few enforcement actions for substandard work have been brought against PAs.

NSPA now appeals to Congress and specifically to this Subcommittee to end this arbitrary, unfair and unjustified policy.

The fact is that the practice of public accountancy is not limited to the certified public accountant and that there are over 12,000 public accountants who have been licensed or registered by their respective States since December 31, 1970. These 12,000 (plus) public accountants have moreover been recognized by their States as competent to perform the audit function.

The licensing or registration approach with which we are dealing falls into two categories: One group of States has enacted dying class legislation which provides for the registration of public accountants who have satisfied certain criteria up to a certain cut-off date. After that date there would be only one route within those States to the practice of public accountancy, and that is by certification. This approach is, in fact, that which is embodied in the GAO policy underlying the current language of Title II, Section 202(2) in both bills.

Our argument against this policy as elaborated upon above is that there has been no empirical evidence showing that public accountants licensed or registered since December 31, 1970, are any less qualified than those licensed or registered on or before that date. In addition, in these States, the GAO policy would not be negated if S.45 and S.807 were to accommodate those public accountants registered or licensed after the cut-off date insofar as these States have imposed their own cut-off dates and eventually the audit function would be reserved to CPAs by attrition.

Further, the State legislatures have ensured that all licensees shall maintain their professional qualifications and capabilities through such mechanisms as continuing education. The boards of accountancy in "dying class" States are also provided with revocation and suspension powers to enforce the level of quality of professional practice it requires from its licensees. "Dying class" jurisdictions which have licensed or registered public accountants since December 31, 1970 are: Alabama, Arkansas, the District of Columbia, Idaho, Iowa, Minnesota, Montana, New Hampshire (attest function), New Jersey, North Dakota, Oklahoma and Pennsylvania.

The second category with which we are dealing is that group of States which provides for the continued licensing of non-certified public accountants in perpetuity. These perpetuity jurisdictions are: Georgia, Maine, New Mexico, Ohio, Oregon, South Dakota, Tennessee and Vermont.

The legislatures of these States have established various education, experience and examination requirements to satisfy themselves that the non-certified but licensed public accountant possesses the requisite degree of knowledge and ability to engage in the practice of public accountancy.

In summary, the GAO has recognized that non-certified public accountants are qualified to perform audits as witnessed by its acceptance of those licensed before the cut-off date. Moreover, a number of States continue to examine the proficiency of the non-certified public accountants for the purpose of licensing or registering them to engage in the practice of public accountancy.

Consequently we request that Title II, Section 202(2) of S.45 and S.807 be amended to read:

"(2) The term "public accountants" means

(a) persons who are certified public accountants, certified by a regulatory authority of a State; and

(b) persons who are licensed or registered public accountants, licensed or registered by a regulatory authority of a State."

This amendment would safeguard the rights of those public accountants who are recognized by their State legislatures to practice public accountancy while at the same time would preclude those who have not met the prescribed standards from participating in the audits of federal assistance programs.

Senator **Durenberger**. That concludes today's hearing.

Thank you all very much for your participation in, hopefully, our final hearing on grant reform legislation.

[Whereupon, at 11:24 a.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

97TH CONGRESS
1ST SESSION

S. 45

A bill to reform the laws relating to the provision of Federal assistance in order to provide State and local governments with greater flexibility in managing programs and projects using such assistance.

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1981

Mr. SASSER (for himself, Mr. NUNN, Mr. PRYOR, Mr. LEVIN, and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

---

A BILL

A bill to reform the laws relating to the provision of Federal assistance in order to provide State and local governments with greater flexibility in managing programs and projects using such assistance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Assistance Reform Act of 1981".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act—

(1) to encourage the consolidation of Federal grant programs, when such consolidation is consistent with applicable statutes and would further the goals and objectives of the grant programs consolidated;

(2) to provide for the efficient use of Federal, State, and local government audit resources;

(3) to enable State and local governments and nonprofit organizations to adapt programs for Federal assistance to the particular needs of beneficiaries and the operating practices of recipients by drawing upon appropriations available from more than one Federal program;

(4) to streamline and simplify generally applicable national policy requirements attached to Federal assistance programs; and

(5) to implement several other improvements in the administration of the Federal grant system.

TITLE I—CONSOLIDATION OF FEDERAL ASSISTANCE PROGRAMS

SEC. 101. (a) Title 5, United States Code, is amended by inserting after chapter 9 the following new chapter:

"CHAPTER 10—FEDERAL ASSISTANCE PROGRAM CONSOLIDATION

"Sec.
"1001. Definitions.
"1002. Examination of Federal assistance programs required.
"1003. Federal assistance program consolidation plans.
"1004. Limitations on powers.

"1005. Method of taking effect.
"1006. Effect on other laws and regulations.

"§ 1001. Definitions

"For purposes of this chapter—

"(1) the term 'agency' has the same meaning as the term 'Federal agency' in section 101 of the Intergovernmental Cooperation Act of 1968;

"(2) the term 'consolidation plan' means a Federal assistance program consolidation plan proposed under section 1003 of this title;

"(3) the term 'Federal assistance' means any assistance provided by an agency in the form of grants, loans, loan guarantees, property, contracts, cooperative agreements or technical assistance to State or local governments or other recipients, except that such term does not include direct cash assistance to individuals, contracts for the procurement of goods and services of the United States, subsidies, or insurance;

"(4) the term 'functionally related programs' refers to those programs which have, in essence, the same major purposes and provide assistance to the same types of beneficiaries and recipient groups; and

"(5) the term 'resolution' means a joint resolution of the Senate and the House of Representatives, the matter after the resolving clause of which is as follows: 'That the Congress of the United States approves the consolidation plan numbered , transmitted by the President on , 19 , including such changes as may have been subsequently proposed by the President in accordance with section 1003(e) of title 5, United States Code.', the first blank space therein being filled with the number of the plan and the second blank space therein being filled with the date on which the plan was transmitted to the Congress.

"§ 1002. Examination of Federal assistance programs required

"Prior to the beginning of each regular session of Congress, the President shall examine the various Federal assistance programs established by law in order to determine if consolidation of any such programs is necessary or desirable to—

"(1) facilitate the adaptation of Federal assistance programs to the particular needs of beneficiaries and the operating practices of recipients in a manner consistent with congressional purposes;

"(2) promote better administration and more effective planning of such programs;

"(3) improve coordination of such programs;

"(4) eliminate program overlap and duplication; and

"(5) promote economy and efficiency to the fullest extent consistent with the achievement of program goals.

"§ 1003. Federal assistance program consolidation plans

"(a) If the President, after making the examination required by section 1002 of this title, finds that consolidation of Federal assistance programs is necessary or desirable to accomplish the purposes specified in paragraphs (1) through (5) of such section, he shall prepare one or more Federal assistance consolidation plans. The President shall transmit each such consolidation plan (bearing an identification number) to the Congress within sixty days of continuous session of Congress after the beginning of each regular session of such Congress. Each such consolidation plan shall include a declaration that the consolidation included in the plan is necessary or desirable to accomplish the purposes specified in such paragraphs and an explanation of how each program included in the plan is functionally related to the other programs included in the plan.

"(b) In each consolidation plan transmitted to the Congress under this section, the President shall—

"(1) place responsibility for administration of the consolidation plan and each of the Federal assistance programs included in such plan in a single Federal agency;

"(2) specify in detail the terms and conditions under which the Federal assistance programs included in the plan will be administered, including a specification of requirements such as State and local matching for Federal funds, allotment and apportionment, financial management, planning, and eligibility requirements to be used in the plan, except that in selecting the terms and conditions for the administration of the plan, the President is limited by the terms and conditions included in one or more of the Federal assistance programs being consolidated and such other conditions as are required to insure that the intended benefits are delivered to the intended beneficiaries in a manner consistent with congressional purposes; and

"(3) specify the date of expiration of the consolidation plan, except that in selecting an expiration date under this paragraph the President shall specify a date which—

"(A) except as provided in subparagraph (B) of this paragraph, is not earlier than the earliest date and not later than the latest date on which the authorizations of appropriations for any of the Federal assistance programs consolidated under the plan expire; and

"(B) is not later than ten years after the effective date of the plan.

"(c) The President shall include with each consolidation plan transmitted to the Congress under this section a message which describes (1) the differences between the terms and conditions of the individual Federal assistance programs to be consolidated under the plan and the terms and conditions that will be applicable to such programs after the consolidation plan becomes effective, and (2) the reasons for selecting the terms and conditions used in the consolidation plan.

"(d) The President shall transmit each consolidation plan to both Houses of Congress on the same day and to each House while it is in session, except that—

"(1) the President may not transmit a consolidation plan to the Congress within thirty days of continuous session of Congress after the transmission of a previous consolidation plan concerning one or more of the same programs; and

"(2) not more than three consolidation plans may be pending before the Congress at one time.

"(e) Before a resolution with respect to a consolidation plan has been ordered reported by a committee in the House and Senate designated pursuant to section 1005(d)(1), in either the Senate or the House of Representatives, the President may make modifications or revisions of the plan, which shall thereafter be treated as a part of the consolidation plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter.

"(f) Within sixty days of continuous session of Congress after the beginning of each regular session of Congress, the President shall prepare and transmit to the Congress a report concerning the administration of this chapter. The report shall include a detailed analysis of the need for and desirability of the consolidation of Federal assistance programs and shall describe proposed consolidation plans and the actions taken to implement consolidation plans which have become effective. If, during the year preceding the year in which the report is made, the President has not submitted a consolidation plan under this chapter, the report shall cite the reasons why he did not submit such a plan.

"§ 1004. Limitations on powers

"(a) A consolidation plan may not provide for, and may not have the effect of, (1) consolidating any Federal assistance programs which are not functionally related, or (2) transferring responsibility for the administration of any program contained in such plan to an agency which was not responsible for the administration of any Federal assistance program included in the consolidation plan prior to the date on which the consolidation plan takes effect or, (3) providing that a group or person becomes eligible for assistance under the plan that is not eligible under one or more of the programs being consolidated or (4) excluding any person or group from eligibility for assistance under the consolidation plan that is already eligible for assistance under one or more of the programs being consolidated.

"(b) Each consolidation plan shall provide for only one consolidation of two or more Federal assistance programs.

"(c) The authority under this title will expire ten years from the date it becomes effective.

"§ 1005. Method of taking effect

"(a) A consolidation plan shall be effective upon approval by the President of a resolution which has been adopted within ninety days of continuous session of Congress after the date of transmittal of the plan to the Congress.

"(b) A consolidation plan may provide that any provision of the plan may be effective at a time later than the date on which the plan becomes effective.

"(c) On the day on which a consolidation plan is transmitted to the Senate and the House of Representatives, a resolution shall be introduced (by request) in the Senate by the Chairman of the Committee on Governmental Affairs of the Senate, or by a Member or Members of the Senate designated by such chairman; and shall be introduced (by request) in the House by the chairman of the Committee on Government Operations of the House, or by a Member or Members of the House designated by such chairman.

"(d)(1) A resolution with respect to a consolidation plan shall be referred to the committee of the Senate and the House of Representatives having primary jurisdiction over such resolution under the rules of the Senate and the House of Representatives.

(2) Any resolution with respect to a consolidation plan affirmatively reported by the committee with primary jurisdiction which contains any matter within the jurisdiction of any other committee shall be referred to such other committee for a period of fifteen days of continuous session of Congress if the chairman of such other committee requests such referral no later than the day following the day on which the resolution is reported by the committee with primary jurisdiction. In any case in which such other committee fails to report the resolution within the period herein prescribed, such committee shall be automatically discharged from further consideration of such resolution on the sixteenth day of continuous session of Congress following the day on which such resolution is referred to such committee.

"(3) Each committee to which the resolution is referred shall consider the consolidation plan and shall make its recommendations to the Senate or the House of Representatives, as the case may be, except that no committee shall take action on the consolidation plan within fifteen calendar days of its transmittal to Congress.

"(e) When the last committee to which the resolution has been referred has reported, or has been discharged from further consideration of a resolution with respect to a consolidation plan, pursuant to (d)(2), it is in order at any time thereafter (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is privileged in the Senate and highly privileged in the House of Representatives and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

"(f) For purposes of this section and section 1003 of this title—

"(1) continuity of session is broken only by an adjournment of Congress sine die; and

"(2) the days in which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the ninety-day period.

"(g) The provisions of subsections (c) through (k) of this section and of paragraph (4) of section 1001 of this title are enacted by the Congress—

"(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House with respect to resolutions referred to in such subsections and paragraph; and they supersede other rules to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 1006. Effect on other laws and regulations

"(a) To the extent that any provision of a consolidation plan which becomes effective under this chapter is inconsistent with any provision of law enacted prior to the effective date of the plan, the provision of the consolidation plan shall control to the extent that such plan specifies the provision of law to be superseded, consistent with section 1003(b)(2).

"(b) Within a reasonable time after the consolidation plan becomes effective, modifications shall be made in any regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, or other action made, prescribed, issued, granted, or performed with respect to any matter affected by a consolidation plan to reconcile any inconsistency as thereof with the consolidation plan, as set forth in that plan, but otherwise shall continue in effect.

"(c) No action or other proceeding lawfully commenced by or against the head of any agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, shall abate by reason of the taking effect of a consolidation plan under this chapter. On motion or supplemental petition filed at any time within twelve months after any such plan takes effect, showing a necessity for survival of the action or other proceeding to obtain a settlement of the questions involved, the court may allow the action or other proceeding to be maintained by or against the successor of the head or officer under the consolidation plan or, if there is no successor, against such agency or officer as the President designates.

"(d) A consolidation plan may provide for the transfer of appropriations or other budget authority in such manner that the aggregate amount of appropriations and other budget authority available for carrying out the Federal assistance programs involved in such plan shall be available for any or all such programs, and the aggregate amount of authorizations of appropriations or other budget authority for such programs shall be deemed an authorization of appropriations and other budget authority for any or all of such programs. The appropriations or portions of appropriations unexpended by reason of operation of this chapter may not be used for any purpose, but shall revert to the agencies administering the programs. The Office of Management and Budget shall report to the Appropriations Committees, as part of their annual budget submission, on the saving effected under the consolidation plan.".

(b) The table of chapters for part I of title 5, United States Code, immediately preceding chapter 1, is amended by adding at the end thereof the following new item:

"10. Federal Assistance Program Consolidation .... 1001.".

TITLE II—FINANCIAL MANAGEMENT AND AUDIT OF FEDERAL ASSISTANCE PROGRAMS

PURPOSE

SEC. 201. It is the purpose of this title—

(1) to improve the financial management of Federal assistance programs;

(2) to promote the efficient use of audit resources;

(3) to relieve State and local governments, especially small communities, and nonprofit organizations,

of the costs and paperwork burdens due to conflicting and redundant requirements of Federal assistance programs; and

(4) to provide for the establishment of consistent requirements for the financial management and audit of Federal assistance provided to or administered by State and local governments and nonprofit organizations.

DEFINITIONS

SEC. 202. As used in this title—

(1) the term "financial and compliance audit" means a systematic review or appraisal of a recipient of Federal assistance to determine and report whether the financial operations of the recipient are properly conducted and financial reports are presented fairly; and whether the entity has complied with significant compliance requirements contained in laws and regulations that can materially affect the entities' financial operations, conditions and reports.

(2) The term "public accountants" means certified public accountants, or licensed public accountants licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State.

(3) The term "independent auditors" means properly constituted State or local government audit agen-

cies or public accountants, who have no direct relationship with the functions or activities being audited or with the business conducted by any of the officials of the government agency or unit being audited.

(4) The term "independent audit" means an audit conducted by independent auditors.

(5) The term "generally accepted auditing standards" means the auditing standards set forth in the financial and compliance element of the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions", issued by the Comptroller General of the United States and incorporating the audit standards of the American Institute of Certified Public Accountants.

(6) The term "Federal assistance" means any assistance provided by an agency in the form of grants, loans, loan guarantees, property, contracts, cooperative agreements or technical assistance to State or local governments or other recipients, except that such term does not include direct Federal cash assistance to individuals, contracts for the procurement of goods and services of the United States, subsidies, insurance or assistance provided by the Tennessee Valley Authority.

(7) The term "local government" means any unit of government within a State, a county, borough, municipality, city, town, township, parish, local public authority, special district, intrastate district, council of governments, other interstate government entity, or any other instrumentality of local government but shall not be construed to mean any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.

(8) The term "entity" means a first level organizational unit of a State or local government or nonprofit organization, and includes all subordinate organizational units within such first level unit and all contractors providing services to such unit.

(9) The term "nonprofit organization" means an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code.

GENERAL FINANCIAL MANAGEMENT AND AUDIT

SEC. 203. (a) In order to insure that Federal accountability systems do not impose unnecessary, conflicting, and duplicative accounting, auditing, and reporting requirements upon State and local governments, especially upon small communities and nonprofit organizations, who are recipients of Federal assistance and in order to reduce the costs, paperwork, and regulatory burdens associated with Federal assistance programs, the Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall, consistent with applicable law, develop, establish, and maintain for use by all Federal agencies standard accounting, auditing, and financial management policies, procedures, and requirements for the administration, accounting, and financial auditing of grants, contracts, cooperative agreements, and other forms of Federal assistance to State and local governments and nonprofit organizations. Any such policy, procedure, or requirement shall not conflict with any applicable audit standard developed by the Comptroller General of the United States. Standard policies, procedures, and requirements developed by the Director of the Office of Management and Budget pursuant to this section shall include—

(1) terms, definitions, and conditions used in conjunction with grants, contracts, cooperative agreements, and other forms of Federal assistance to State and local governments;

(2) generally accepted accounting principles and standards as required for financial accounting and reporting;

(3) uniform requirements for grant application forms;

(4) uniform principles and standards for sound financial management and auditing; and

(5) uniform payment policies for grants, contracts, cooperative agreements, and other forms of Federal assistance.

(b) The Director of the Office of Management and Budget shall prescribe directives to carry out the standard policies, procedures, and requirements established pursuant to subsection (a). Any such directive shall be binding on all Federal departments and agencies. Such directives shall prescribe effective means to coordinate Federal, State, and local audits of grant programs.

ACCOUNTING AND AUDITING PROCEDURES AND REQUIREMENTS

SEC. 204. (a) At least once every two years, there shall be a single independent financial and compliance audit of—

(1) State and local governments, or State and local governmental entities and the subgrantees of such State and local governments or governmental entities; and

(2) nonprofit organizations or entities of nonprofit organizations and the subgrantees of such nonprofit organizations or entities,

which receive Federal assistance. Any such audit shall include an evaluation of the accounting and control systems of the recipient of Federal assistance and of the activities by the recipient to comply with the financial and performance requirements of grants received by the recipient from the Federal Government. Audits carried out pursuant to this section shall be audits of the recipient, rather than audits of individual grants or programs. In the case of any recipient of Federal assistance which receives less than $100,000 per year, the audit required by this section shall be conducted at least once every five years, but not more frequently than once every three years, unless there is evidence of fraud or other violation of Federal law in connection with such assistance.

(b) A State government shall have the responsibility for financial and compliance audits of the State government or State governmental entities receiving Federal assistance, and the subgrantees of such government or entities. A local government shall have the responsibility for financial and compliance audits of the local government, local governmental entities receiving Federal assistance, and the subgrantees of such government or entities. A nonprofit organization shall have responsibility for financial and compliance audits of the nonprofit organization or entities of the nonprofit organization receiving Federal assistance and the subgrantees of such nonprofit organizations or entities unless by law, the State or local government has such responsibility, in which event the State or local government, as appropriate, shall have the responsibility for such audits. The audits shall be made by independent auditors in accordance with generally accepted auditing standards and shall include an opinion as to whether the recipient's accounting policies and financial statements follow generally accepted accounting principles and standards.

(c)(1) The Federal Government shall be responsible, through the quality review process established pursuant to subsection (d), for assuring that financial and compliance audits conducted by independent auditors meet generally accepted auditing standards. Nothing in this title limits the authority of Federal agencies to make audits of Federal grants-in-aid to State and local governments, State and local governmental entities and the subgrantees of such State and local government or governmental entities: *Provided, however,* That if independent audits arranged for by State or local governments meet generally accepted auditing standards and other requirements established pursuant to subsection (d) Federal agencies shall rely on those audits and any additional audit work shall build upon the work already done.

(2) The Federal Government is responsible for conducting, or contracting (to such extent or in such amounts as are provided in appropriations Acts) for the conduct of, audits which are not financial and compliance audits.

(3) Nothing in this title limits the Federal Government's responsibility or authority to enforce Federal law or regula-

tions, procedures or reporting requirements arising pursuant thereto.

(d) The Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall establish and approve a quality review process that will assure the proper performance of audits. Audits performed by Federal, State, or local government audit agencies which have been approved pursuant to quality review process shall be accepted by all Federal agencies making and administering grants.

(e) The Director of the Office of Management and Budget shall prescribe appropriate means for the reimbursement of independent auditors for actual expenses incurred for such parts of audits as are performed on behalf of the Federal Government, including provisions for—

(1) direct reimbursement for such expenses; and

(2) equitable financial settlements when such audits fail to meet the standard policies, procedures, and requirements developed pursuant to section 203.

SEC. 205. The term State, as used in this title, shall not be construed to mean any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.

TITLE III—INTEGRATED GRANT DEVELOPMENT

SEC. 301. The Joint Funding Simplification Act of 1974 (88 Stat. 1604; 42 U.S.C. 4252) is amended by striking out the title and all that follows and inserting in lieu thereof the following: "This title may be cited as the 'Integrated Grant Development Act of 1981'.".

PURPOSES

SEC. 302. The purpose of this title is to improve Federal assistance program performance by enabling State and local governments and nonprofit organizations to use Federal assistance more effectively and efficiently and adapt that assistance more readily to the particular needs of such governments or organizations through the wider use of projects drawing upon resources available from more than one Federal agency, program, or appropriation. It is the further purpose of this title to encourage arrangements between the Federal Government and State governments under which local governments and nonprofit organizations may more effectively and efficiently combine State and Federal resources in support of projects of common interest to the beneficiaries, the governments and organizations concerned.

DEFINITIONS

SEC. 303. For purposes of this title—

(1) the term "Federal assistance program" means any program that provides assistance through grants, cooperative agreements, or contractual arrangements, but does not include assistance in the form of revenue sharing, loans, loan guarantees, or insurance;

(2) the term "applicant" means any State or local government or nonprofit organization acting separately or together in seeking assistance with respect to a single project;

(3) the term "project" means any undertaking, whether of a temporary or continuing nature, that includes components proposed or approved for assistance under more than one Federal program, or under one or more Federal and one or more State programs, if each such component contributes materially to the accomplishment of a single purpose or closely related purposes;

(4) the term "Federal agency" means any agency, department, corporation, independent establishment, or other entity of the executive branch of the Government of the United States;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, and any tribe as defined in section 3(c) of the Indian Financing Act of 1974; and

(6) the term "local government" means any local unit of government, including a city, county, parish, town, township, village, school district, council of gov-

ernments, or other agency or instrumentality of a local unit of government.

BASIC RESPONSIBILITIES OF THE PRESIDENT AND THE HEADS OF FEDERAL AGENCIES

SEC. 304. (a) The President shall issue such guidelines as may be necessary to assure that all Federal agencies carry out subsection 304(b) in a manner consistent with the purposes of this title. In promulgating such guidelines, the President may require that Federal agencies adopt or prescribe procedures that will assure that applicants for assistance under projects funded pursuant to this title make appropriate efforts to (1) secure the views and recommendations of recipients and beneficiaries of Federal assistance who may be significantly affected by such projects and (2) resolve questions of common interest to such recipients prior to submission of any application.

(b) Subject to applicable law and to such guidelines as the President shall issue pursuant to subsection (a), the head of each Federal agency shall—

(1) identify related programs likely to be particularly suitable or appropriate for providing joint support;

(2) promulgate guidelines, and develop and publicize model or illustrative projects, joint or common application forms, and other materials and guidance to

assist in the planning and development of projects drawing support from different programs;

(3) review administratively established program requirements in order to determine which requirements may impede integrated grant development for projects and the extent to which such requirements may be modified, and on the basis of such review, make appropriate modifications in such requirements;

(4) establish common technical or administrative rules with respect to related programs to assist in integrated grant development for specific projects or classes of projects under such programs; and

(5) create joint or common procedures and mechanisms for the processing of applications, the supervision of projects, and the evaluation of performance, including procedures for—

(A) designating agencies to assume responsibilities for the processing of applications on behalf of several agencies;

(B) designating managing agencies to assume responsibilities for project supervision and performance evaluation on behalf of several agencies; and

(C) insuring that participating Federal agencies contribute proportionately to the support of the administrative costs of the agency designated under subparagraphs (A) and (B) which are attributable to integrated grant development, including costs for the provision of staff, administrative, and fiscal services.

(c) To the maximum extent permitted by law, the head of each Federal agency shall act to further the purposes of this title with respect to Federal assistance programs administered by his agency. The head of each Federal agency shall consult and cooperate with the heads of other Federal agencies with respect to Federal assistance programs that may be appropriate to provide joint support of projects undertaken by State or local governments or nonprofit organizations.

(d) The Director of the Office of Management and Budget shall have responsibility for carrying out the provisions of this title, including responsibility for—

(1) the provision of overall guidance and the training of Federal agency personnel concerning the implementation of this title;

(2) the development of criteria to guide Federal agencies in identifying programs suitable for integrated grant development;

(3) the coordination of agency actions concerning integrated grant projects and the resolution of conflicts

which may arise between agencies in developing uniform provisions under section 307;

(4) the conduct of meetings to resolve problems which may arise between Federal agencies and recipients of Federal assistance in the development and administration of integrated grant programs; and

(5) the monitoring of the use by Federal, State, and local government agencies of the opportunities available under this title for the development and administration of integrated grant projects.

PROCESSING OF APPLICATIONS

SEC. 305. In processing applications or requests for assistance for an integrated grant project, the head of each Federal agency shall assure, to the extent reasonably possible that—

(1) all required reviews and approvals are handled expeditiously;

(2) full account is taken of time constraints that would affect the feasibility of an integrated grant project in any case in which the applicant has informed the agency of such constraints;

(3) the applicant is required to deal with a minimum number of representatives of Federal agencies, acting separately or as a common board or panel;

(4) the applicant is promptly informed of decisions concerning an application and of any special problems or impediments that may affect the feasibility of the provision of Federal assistance on an integrated basis; and

(5) the applicant is not required by representatives of any one Federal agency or program to obtain information or assurances concerning the requirements or actions of another Federal agency that could more appropriately be secured through direct communication among the Federal agencies involved.

SPECIAL AUTHORITIES; BASIC CONDITIONS

SEC. 306. (a) Subject to the conditions prescribed in subsection (b), the head of each Federal agency shall use the authority described in sections 307, 308, and 309 with respect to projects assisted under more than one Federal assistance program.

(b) The authority described in sections 307, 308, and 309 shall be exercised by Federal agencies only pursuant to regulations prescribed by the President. Such regulations shall include criteria or procedures to assure that the authority described in such sections is—

(1) limited in use to problems that cannot be adequately dealt with through other actions pursuant to this title or other applicable law;

(2) applied only as is necessary to promote expeditious processing of applications or effective and efficient administration of projects; and

(3) applied in a manner consistent with the protection of the Federal interest.

ESTABLISHMENT OF UNIFORM TECHNICAL OR ADMINISTRATIVE REQUIREMENTS

SEC. 307. (a) In order to provide for projects that would otherwise be subject to varying or conflicting technical or administrative rules and procedures not required by law, the head of each Federal agency shall adopt and adhere to uniform provisions with respect to—

(1) the financial administration of such projects, including requirements concerning accounting, reporting and auditing, maintenance of separate bank accounts, and use of letters-of-credit, except that the head of a Federal agency shall adopt and adhere to such uniform provisions to the extent such provisions are consistent with the requirements of section 309;

(2) the timing of Federal payments for such projects and methods for such payments;

(3) the form in which assistance is provided, including grants, cooperative agreements, and contracts; and

(4) the accountability for, and the disposition of, records, property, or structures acquired or constructed with Federal assistance.

(b) In order to permit processing of applications in accordance with the purposes of this title, the head of each Federal agency may provide for review of proposals for projects by a single panel, board, or committee in lieu of review by separate panels, boards, or committees, except when such separate review is specifically required by law.

DELEGATION OF POWERS

SEC. 308. With the approval of the President, the head of a Federal agency may delegate to the head of another Federal agency any power or function relating to the supervision or administration of Federal assistance for projects or classes of projects funded under this title, or may make other arrangements with the head of a Federal agency to perform such supervision or administration. The head of an agency may delegate a power or function under this section only on such conditions as may be appropriate to assure that the power or function delegated is exercised in accordance with applicable statutory provisions and policies. A delegation under this section shall not relieve the head of the Federal agency making such delegation of responsibility for the proper and efficient management of projects assisted by his agency.

FUNDING ARRANGEMENTS AND PROCEDURES

SEC. 309. (a) In order to provide for the more effective administration of funds drawn from more than one Federal program or appropriation in support of projects under this title, there may be established management funds with respect to such projects, from time to time, there shall be transferred to the management fund from each affected appropriation its proportionate share of amounts needed for payment to the grantee, any amounts remaining in the hands of the grantee at the completion of the project shall be returned to the contributing agencies on a proportional basis.

(b) Any account in a management fund shall be subject to such agreements, not inconsistent with this section and other applicable law, as may be entered into by participating Federal agencies with respect to the discharge of the responsibilities of such agencies and shall assure the availability of necessary information to such agencies and to the Congress. Any such agreement shall provide that the agency administering the management fund shall be responsible and accountable for the amounts provided for each account established in the fund, and that such agency shall provide an accounting of such amounts by program and by appropriation. Any such agreement may include procedures for determining whether amounts in the account are in excess of the amounts required, for returning any such excess to the participating Federal agencies in accordance with the availability of the applicable appropriation and in accordance with a formula providing an equitable distribution, and for effective returns according to the applicable appropriations, subject to fiscal year limitations. The appropriations or portions of appropriations unexpended by reason of operation of this chapter may not be used for any purpose, but shall revert to the agencies administering the programs. The Office of Management and Budget shall report to the Appropriations Committees, as part of their annual budget submission, on the saving effected by the integrated grants.

(c) Each recipient of funds under a project financed through a management fund established pursuant to this section shall keep such records as the head of the Federal agency responsible for administering the fund shall prescribe. Such records shall, at a minimum, fully disclose—

(1) the amount and disposition of Federal assistance received by such recipient under each program and appropriation;

(2) the total cost of the project for which such Federal assistance was granted;

(3) the amount of the cost of the project supplied by sources other than the Federal Government; and

(4) such other information as will facilitate an effective audit of the recipient.

(d) The head of the Federal agency responsible for administering a management fund established pursuant to this section and the Comptroller General of the United States or any of their duly authorized representatives shall have access, for the purposes of audit and examination, to any books, documents, papers, and records of any recipient of Federal assistance under a project financed through a management fund established pursuant to this subsection that are pertinent to such assistance.

(e) A single non-Federal share shall be established for any project financed through a management fund according to the Federal share ratios applicable to the Federal assistance programs from which the project draws support, and the necessary proportion of funds shall be transferred to the project account from each such program.

SEC. 310. Appropriations available to any Federal assistance program for technical assistance or the training of personnel may be made available for the provision of technical assistance and training in connection with projects proposed or approved for integrated grant development involving that program and any other Federal assistance program.

REPORTING

SEC. 311. At least two years before the date on which the provisions of this title expire, the President shall prepare and transmit to the Congress a comprehensive report which describes the actions taken by Federal agencies under this title and which makes recommendations for the continuation, modification, or termination of this title. The report shall provide a detailed evaluation of the administration of this title, including information regarding the benefits, costs, and savings of integrated grant projects accruing to the Federal Government and to participating State and local governments and nonprofit organizations.

EFFECTIVE DATE AND EXPIRATION

SEC. 312. This title shall become effective one hundred and twenty days after the date of enactment of this Act, and shall expire five years after the date upon which it becomes effective. The expiration of this title shall not affect any project approved prior to the date of such expiration.

TITLE IV—ADMINISTRATION OF GENERALLY APPLICABLE FEDERAL ASSISTANCE REQUIREMENTS

SEC. 401. The Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201 et seq.) is amended by adding at the end thereof the following new title:

"TITLE VII—ADMINISTRATION OF GENERALLY APPLICABLE FEDERAL ASSISTANCE REQUIREMENTS

"STATEMENT OF PURPOSE

"SEC. 701. It is the purpose of this title—

"(1) to encourage simplification, standardization, and coordination to the maximum extent feasible in the administration of all national policy requirements which are generally applicable to Federal assistance consistent with the goals and objectives of such requirements;

"(2) to improve the procedures by which such requirements are developed, implemented, and evaluated; and

"(3) to reduce the overall administrative burden of such requirements on assistance recipients.

"DEFINITIONS

"SEC. 702. As used in this title—

"(1) the term 'generally applicable requirement' means any requirement—

"(A) with which an assistance recipient is required to comply under Federal law or administrative rule or regulation in order to achieve national policy objectives; and

"(B) which applies to programs administered by two or more assistance agencies, regardless of whether such requirement is contained in one or more of such laws, rules, or regulations;

"(2) the term 'designated agency' means a Federal agency designated by the President pursuant to this title, or a Federal agency which has been designated by law, to coordinate the preparation and implementation of national policy assistance standards for specified generally applicable requirements and report on the administration of such requirements.

"(3) the term 'assistance recipient' means a State or local government or other organization that receives Federal assistance;

"(4) the term 'national policy assistance standards' means a set of guidelines, statements of objectives, standards or other documents issued to achieve the objectives of certain generally applicable requirements in a manner which is, to the greatest extent feasible, substantially uniform among affected assistance programs and is designed to take into account characteristics of classes of recipients or types of assistance;

"(5) the term 'assistance agency' means a Federal agency that administers a Federal assistance program; and

"(6) the term 'Federal assistance' means any assistance provided by an agency in the form of grants, loans, loan guarantees, property, contracts (except those for the procurement of goods and services for the Federal Government), or technical assistance.

"ASSIGNMENT OF DESIGNATED AGENCIES

"SEC. 703. (a) Within one hundred twenty days after the date of enactment of this title, and from time to time thereafter as he deems appropriate, the President shall designate, consistent with any applicable law, including reorganization plans, a Federal agency to coordinate the preparation of national policy assistance standards for one or more generally applicable requirements for Federal assistance and to report on the implementation of such requirements. As determined by the President, designated agencies shall be responsible for generally applicable requirements in various subject areas such as—

"(1) labor practices requirements;

"(2) public employee standards;

"(3) equal services requirements;

"(4) equal employment requirements;

"(5) access to Government information;

"(6) procurement standards;

"(7) planning requirements;

"(8) financial and administrative requirements; and

"(9) environmental protection requirements.

"(b) In evaluating Federal agencies for designation under subsection (a), the President shall consider—

"(1) the relationship of the generally applicable requirement to the functions and program responsibilities of the agency;

"(2) the capacity of the agency to effectively carry out the responsibilities of a designated agency; and

"(3) the smallest number of designated agencies which is practicable for the promulgation of national policy assistance standards for implementing related generally applicable requirements.

"(c) If any generally applicable requirement is established pursuant to a statute or administrative rule or regulation enacted or adopted after the date of enactment of this title, the President shall, in accordance with subsections (a) and (b), designate a Federal agency to coordinate preparation of national policy standards for such requirement and report on the implementation of such requirement.

"ISSUANCE OF NATIONAL POLICY ASSISTANCE STANDARDS

"Sec. 704. (a)(1) Each designated agency shall coordinate the preparation of national policy assistance standards to implement the generally applicable requirements in the subject areas for which the agency is responsible. The President shall establish a date for the preparation of each national policy assistance standard which shall be not later than two years after the date on which the agency is designated under section 703. If any generally applicable requirement is affected or established by a statute or administrative rule or regulation enacted or adopted after the date of enactment of this title, the President shall set a specific date for the preparation of national policy assistance standards under this section which shall be not later than two years after the date of enactment of such law.

"(2) In coordinating the preparation of any national policy assistance standards under this section, the designated agency shall organize and chair an interagency task force consisting of each assistance agency responsible for implementing the national policy objective. It shall be the responsibility of the designated agency to ensure that the task force prepares each national policy assistance standard by the date established pursuant to paragraph (1) of this subsection and to publish as soon as practicable any such standard prepared pursuant to this section. The task force shall consult, in accordance with any procedures established under section 707(b) of this title, with affected assistance recipients, beneficiaries, and other interested parties. The task force shall begin consultation at the earliest possible time after the date on which the agency is designated by the President under section 703.

"(b) National policy assistance standards for generally applicable requirements shall be consistent with applicable law and, to the maximum extent possible—

"(1) be simple and clear;

"(2) not unnecessarily increase the reporting required of assistance recipients;

"(3) eliminate any unnecessary compliance burdens such standards place upon assistance recipients, to the extent it is possible to do so while still ensuring the full achievement of national policy assistance objectives of the relevant generally applicable requirements;

"(4) include standard compliance procedures, provisions for technical assistance, and other facilitative procedures; and

"(5) be accompanied by a list, based on existing relevant statutory provisions, of the Federal assistance programs to which such standards apply.

"(c) Within one hundred and twenty days after a designated agency publishes national policy assistance standards prepared under this section, each assistance agency administering a Federal assistance program to which such standards apply shall implement and conform to such standards unless the President establishes, after review, a longer period for the implementation of such standards in order to lessen the impact of such standards on affected assistance recipients.

Each assistance agency shall be responsible for insuring that affected assistance recipients comply with such standards.

"(d) Each designated agency shall coordinate the implementation of relevant national assistance policy standards in accordance with the procedures established under section 707(b) and shall, to the maximum extent feasible, ensure that revisions or additions to such standards occur only on the first day of each fiscal year.

"(e) No national policy assistance standard developed and issued pursuant to this section shall in any manner diminish or detract from any requirement of law including compliance and enforcement procedures contained in any generally applicable requirement, especially procedures designed to enforce prohibitions against discrimination on the basis of race, religion, sex, national origin, or handicap.

"IMPLEMENTATION AND ENFORCEMENT ROLES OF FEDERAL AGENCIES

"SEC. 705. (a) The head of each assistance agency shall designate a senior official of the agency responsible for the formulation of policy relating to the administration of Federal assistance to—

"(1) coordinate compliance activities under generally applicable standards throughout the agency;

"(2) ensure the complete and active participation of the agency in the development and implementation of national policy assistance standards; and

"(3) represent the position of the agency on questions relating to generally applicable requirements and associated national policy assistance standards.

"(b) Except as otherwise provided by law, the head of an assistance agency is authorized, in his discretion, to certify and accept State or local government reporting requirements, regulations, directives, standards, and compliance monitoring and enforcement procedures if the agency determines that such State or local government requirements contain the same requirements as national policy assistance standards and that such State or local government requirements are fully complied with and enforced. Nothing in this subsection limits the assistance agency's responsibility or authority to enforce Federal law or its regulations, procedures or reporting requirements arising thereunder. For good cause an assistance agency may rescind any certification issued under this subsection, but shall provide the State or local government with due notice prior to taking any such action and provide such government with an opportunity to demonstrate why the agency action should not be taken.

"(c) Federal agencies administering Federal assistance programs shall take appropriate action, including the provision of technical assistance, to assist affected assistance recipients in their efforts to comply with applicable national policy assistance standards.

"LEGISLATION TO REMOVE IMPEDIMENTS TO IMPLEMENTATION

"SEC. 706. (a) If a designated agency is unable to publish national policy assistance standards pursuant to section 704 due to conflicting or inconsistent provisions of law, or due to other factors which have prevented the development of such standards in accordance with the provisions of this title, the agency shall report its inability to develop such standards to the President. After receipt of such report, the President may direct the agency to prepare a proposed bill to remove any such impediments to the development of such national policy assistance standards and to submit such bill to the President for transmission to the Congress.

"(b) If the President determines, after study, that certain Federal assistance programs should be exempted from any generally applicable requirement established by statute or that basic components of any such requirement are inappropriate, inefficient or poorly suited to effective management, he may prepare a proposed bill to repeal, restrict, or revise the scope or structure of such requirement and shall submit to the Congress his determination under this subsection and such proposed bill.

"GENERAL OVERSIGHT

"SEC. 707. (a) The President may delegate to the Director of the Office of Management and Budget or to the head of any other Federal agency responsibility for monitoring the overall implementation of this title, except that the President may not delegate the authority to name designated agencies under section 703.

"(b) In carrying out the provisions of this title, the President, or in carrying out any responsibility delegated under subsection (a), the Director of the Office of Management and Budget or the head of a Federal agency, may—

"(1) establish a uniform procedure for the development, implementation, and evaluation of national policy assistance standards or other guidance and instructions to recipients required by this title, including provisions to insure the active participation of assistance agencies, program beneficiaries, and assistance recipients to the maximum extent possible; and

"(2) review the administration of generally applicable requirements to improve the effectiveness of such requirements, including working with the designated agencies to ensure effective application of national policy assistance standards to the requirements of particular assistance programs or to the recipients of such programs.

"(c) In carrying out any responsibility delegated under this section, the Office of Management and Budget or the Director thereof shall keep the Congress fully informed of his actions and related agency activities.".

SEC. 402. Nothing in this title affects in any way any exisiting authority the President, the Office of Management and Budget or the Director thereof may otherwise have under the laws of the United States, with respect to the administration of Federal assistance requirements.

TITLE V—MISCELLANEOUS

INFORMATION ON FEDERAL ASSISTANCE

SEC. 501. Section 201 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4211) is amended to read as follows:

"FULL INFORMATION ON FUNDS RECEIVED

"SEC. 201. (a) Any Federal agency which administers a program of Federal assistance to any State government or to a political subdivision thereof shall, upon request, provide written information on the purpose and amounts of such Federal assistance to the State agency which has been designated by the Governor of the State, in consultation with the State legislature, to receive such information.

"(b) The Director of the Office of Management and Budget shall assure that Federal agencies develop procedures and information collection systems to carry out this section and shall monitor compliance by Federal agencies with the provisions of this section.".

PROCEDURAL SAFEGUARDS AND REGULATORY FLEXIBILITY

SEC. 502. Title II of the Intergovernmental Cooperation Act of 1968 is amended by adding at the end thereof the following new sections:

"PROCEDURAL SAFEGUARDS

"SEC. 205. Any Federal agency which administers any program of Federal financial assistance to State and local governments shall—

"(1) provide advance notice to a State or local government of an action by the agency—

"(A) to withdraw the provision of Federal financial assistance to such government;

"(B) to refuse to renew Federal financial assistance which was provided to such government during the fiscal year prior to the fiscal year for which the action is being taken; or

"(C) to withdraw a Federal commitment of funds for any program or project affecting a State or local government where public notice of such Federal commitment to participate has been made;

"(2) upon request of any State or local government whose application for assistance has been rejected by the agency, provide such State or local government with an explanation of the reason or reasons for the rejection of the application; and

"(3) upon request of a State or local government which has received notice of an agency action under paragraph (1), provide such government with an opportunity to demonstrate why the agency action should not be taken. This section does not apply where the withdrawal or refusal by a Federal agency is required by law.

"REGULATORY FLEXIBILITY

"SEC. 206. (a) Whenever a Federal agency which makes grants to State, local governments, and nonprofit organizations adopts a major change in any regulation for the administration of such grants or in any statement or document of the agency specifying conditions for the receipt of such grants, and in the opinion of the head of the granting agency, such State, local government, or nonprofit organization has made a substantial commitment of time and expenditures in administering or applying for the grant under the provisions of the existing regulation, statement or document, the head of such agency may waive for such State and local government compliance with the change in provisions of the regulation, statement or document affecting such grant. The head of an agency shall not grant a waiver that has the effect of diminishing or detracting from any requirement of law or regulation or from fulfillment of the purposes of any affected assistance program.

"(b) This section does not apply to any changed regulation, statement, or document which is required by law. This section is not intended to create any new or additional right to sue.

"STUDY OF ALTERNATIVE APPROACHES TO SERVICE DELIVERY

"SEC. 207. (a) The United States Advisory Commission on Intergovernmental Relations is directed to conduct a study of alternative methods of delivering public services supported by grants-in-aid in order to improve the effectiveness and efficiency of such services. The study shall examine methods of stimulating innovation in the delivery of services and increasing the responsiveness of service-delivery organizations to their clients by introducing competition, consumer choices, and options into the provision of such services.

"(b) The Advisory Commission shall present its findings, and recommendations to the President and the Congress no later than September 30, 1981.

"STATE LEGISLATIVE OVERSIGHT OF FEDERAL FUNDS

"SEC. 208. Nothing in this chapter shall be construed to limit or negate the exercise of powers by State legislatures as determined by their respective State laws to appropriate Federal funds, to designate agencies to implement grant programs and to review State plans and applications for Federal assistance. State legislative powers exercised pursuant to this section shall be conducted in such a manner as not to be inconsistent with the Federal statute authorizing a specific Federal assistance program.".

ANNUAL ANALYSIS OF THE ADMINISTRATIVE COSTS OF FEDERAL ASSISTANCE PROGRAMS

SEC. 503. (a) The Director of the Office of Management and Budget shall establish criteria for comparing the sizes of Federal assistance programs based upon the laws authorizing Federal assistance programs and the amounts authorized to carry out each such program.

(b) By October 15 of each year, the Director of the Office of Management and Budget shall, using the criteria established pursuant to subsection (a), prepare a list of the one hundred largest Federal assistance programs during the preceding fiscal year.

(c) By December 1 of each year, the head of an agency which administers each program included in the list prepared pursuant to subsection (b) shall prepare and transmit to the

Director an analysis of the cost incurred by the agency in administering each such program during the preceding fiscal year. The analysis shall include, for each such program, a comparison of such total cost with the total amount of funds appropriated to carry out such program in such fiscal year.

(d) For purposes of this section, the term "Federal assistance program" has the same meaning as in section 107 of the Intergovernmental Cooperation Act of 1968.

PILOT PROGRAM TO ASSESS THE ADMINISTRATIVE COSTS OF FEDERAL ASSISTANCE PROGRAMS

SEC. 504. (a) The Director of the Office of Management and Budget shall conduct a pilot program to develop and implement methods to assess the administrative costs of Federal assistance programs. In conducting such pilot program, the Director shall select for assessment under the pilot program a representative sample of Federal assistance programs in a number such that the amount appropriated to carry out such selected Federal assistance programs in any fiscal year comprises at least 10 per centum of the amount appropriated to carry out all Federal assistance programs during such fiscal year. Within eighteen months after the date of enactment of this Act, the Director shall report to the Congress concerning the results of the pilot program.

(b) For purposes of this section, the term "Federal assistance programs" has the same meaning as in section 107 of the Intergovernmental Cooperation Act of 1968.

II

97TH CONGRESS
1ST SESSION

S. 807

To reform the laws relating to the provision of Federal assistance in order to simplify and coordinate the management of Federal assistance programs and requirements, provide assistance recipients with greater flexibility, and minimize the administrative burden and adverse economic impact of such programs and requirements.

IN THE SENATE OF THE UNITED STATES

MARCH 26 (legislative day, FEBRUARY 16), 1981

Mr. ROTH (for himself, Mr. DANFORTH, Mr. DURENBERGER, Mr. COHEN, and Mr. CHILES) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

---

A BILL

To reform the laws relating to the provision of Federal assistance in order to simplify and coordinate the management of Federal assistance programs and requirements, provide assistance recipients with greater flexibility, and minimize the administrative burden and adverse economic impact of such programs and requirements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Assistance Improvement Act of 1981".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act—

(1) to encourage the consolidation of Federal programs, when such consolidation is consistent with applicable statutes and would further the goals and objectives of the grant programs consolidated;

(2) to provide for the more efficient use of Federal, State, and local government audit resources;

(3) to streamline and simplify generally applicable national policy requirements attached to Federal assistance programs;

(4) to enable State and local governments and nonprofit organizations to adapt programs for Federal assistance to the particular needs of beneficiaries and the operating practices of recipients by drawing upon appropriations available from more than one Federal programs;

(5) to enable recipients to more effectively target resources toward areas of significant local need by shifting a portion of assistance funds among programs in the same functional area; and

(6) to implement several other improvements in the administration of Federal assistance.

TITLE I—CONSOLIDATION OF FEDERAL ASSISTANCE PROGRAMS

SEC. 101. (a) Title 5, United States Code, is amended by inserting after chapter 9 the following new chapter:

"CHAPTER 10—FEDERAL ASSISTANCE PROGRAM CONSOLIDATION

"Sec.
"1001. Definitions.
"1002. Examination of Federal assistance programs required.
"1003. Federal assistance program consolidation plans.
"1004. Limitations on powers.
"1005. Method of taking effect.
"1006. Effect on other laws and regulations.

"§ 1001. Definitions

"For purposes of this chapter—

"(1) the term 'agency' means an executive agency as defined in section 105 of title 5, United States Code;

"(2) the term 'consolidation plan' means a Federal assistance program consolidation plan proposed under section 1003 of this title;

"(3) the term 'Federal assistance' means any assistance provided by an agency in the form of grants, loans, loan guarantees, property, cooperative agreements or technical assistance to State or local governments or other recipients, except that such term does not include direct cash assistance to individuals, contracts for the procurement of goods and services for the United States, subsidies, or insurances;

"(4) the term 'functionally related programs' refers to those programs which fall under a single functional category as set forth in the Budget of the United States Government transmitted pursuant to section 201(i) of the Budget and Accounting Act of 1921; and

"(5) the term 'resolution' means a joint resolution of the Senate and the House of Representatives, the matter after the resolving clause of which is as follows: 'That the Congress of the United States approves the consolidation plan numbered , transmitted by the President on , 19 , including such changes as may have been subsequently proposed by the President in accordance with section 1003(e) of title 5, United States Code.', the first blank space therein being filled with the number of the plan and the second blank space therein being filled with the date on which the plan was transmitted to the Congress.

"§1002. Examination of Federal assistance programs required

"Prior to the beginning of each regular session of Congress, the President shall examine the various Federal assistance programs established by law in order to determine if consolidation of any such programs is necessary or desirable to accomplish one or more of the following purposes:

"(1) facilitate the adaptation of Federal assistance programs to the particular needs of beneficiaries and the operating practices of recipients in a manner consistent with congressional purposes;

"(2) promote better administration, coordination, and planning of such programs;

"(3) eliminate program overlap and duplication;

"(4) minimize administrative burdens and eliminate adverse economic impacts;

"(5) promote economy and efficiency to the fullest extent consistent with the achievement of programs goals; and

"(6) maximize program effectiveness.

"§ 1003. Federal assistance program consolidation plans

"(a) If the President, after making the examination required by section 1002 of this title, finds that consolidation of Federal assistance programs is necessary or desirable to accomplish the purposes specified in paragraphs (1) through (6) of such section, he shall prepare on or more Federal assistance consolidation plans. Each such consolidation plan shall include a declaration that the consolidation included in the plan is necessary or desirable to accomplish the purposes specified in such paragraphs and an explanation of how each program included in the plan is functionally related to the other programs included in the plan.

"(b) In each consolidation plan transmitted to the Congress under this section, the President shall—

"(1) place responsibility for administration of the consolidation plan and all of Federal assistance programs included in such plan in a single Federal agency;

"(2) specify in detail the terms and conditions under which the Federal assistance programs included in the plan will be administered, including a specification of requirement such as State and local matching for Federal funds, allotment and apportionment, financial management, planning, and eligibility to be used in the plan; and

"(3) specify the date of expiration of the consolidation plan, except that in selecting an expiration date under this paragraph the President shall specify a date which—

"(A) except as provided in subparagraph (B) of this paragraph, is not earlier than the earliest date and not later than the date on which the authorizations of appropriations for any of the Federal assistance programs consolidated under the plan expire; and

"(B) is not later than four years after the effective date of the plan.

"(c) The President shall include with each consolidation plan transmitted to the Congress under this section a message which describe (1) the differences between the terms and conditions of the individual Federal assistance programs to be consolidated under the plan and the terms and conditions that will be applicable to such programs after the consolidation plan becomes effective, and (2) the reasons for selecting the terms and conditions used in the consolidation plan.

"(d) The President shall transmit each consolidation plan to both Houses of Congress on the same day and to each Houses while it is in session, except that—

"(1) the President may not transmit a consolidation plan to the Congress within thirty days of continuous session of Congress after the transmission of a previous consolidation plan concerning one or more programs which fall under the same subfunctional category as set forth in the Budget of the United States transmitted pursuant to section 201(i) of the Budget and Accounting Act of 1921; and

"(2) not more than three consolidation plans may be pending at one time before a committee of the Congress designated pursuant to section 1005(d)(1).

"(e) Before a resolution with respect to a consolidation plan has been ordered reported by a committee designated pursuant to section 1005(d)(1), in either the Senate or the House of Representatives, the President may make modifications or revisions of the plan, which shall thereafter be treated as part of the consolidation plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter.

"(f) Within sixty days of continuous session of Congress after the beginning of each Congress, the President shall prepare and transmit to the Congress a report concerning the administration of this chapter.

"§ 1004. Limitations on powers

"(a) A consolidation plan may not provide for, and may not have the effect of, (1) consolidating any Federal assistance programs which are not functionally related, or (2) transferring responsibility for the administration of any program contained in such plan to an agency which was not responsible for the administration of any Federal assistance program included in the consolidation plan prior to the date on which the consolidation plan takes effect or, (3) providing that a group or person becomes eligible for assistance under the plan that is not eligible under one or more of the programs being consolidated or (4) excluding any purposes and goals established under the programs being consolidated from the range of activities authorized by such plan.

"(b) The authority under this title will expire five years from the date it becomes effective.

"§ 1005. Method of taking effect

"(a) A consolidation plan shall be effective upon approval by the President of a resolution which has been adopted within ninety days of continuous session of Congress after the date of transmittal of the plan to the Congress.

"(b) A consolidation plan may provide that any provision of the plan may be effective at a time later than the date on which the plan becomes effective.

"(c) On the day on which a consolidation plan is transmitted to the Senate and the House of Representatives, a resolution shall be introduced (by request) in the Senate by the Chairman of the Committee on Governmental Affairs of the Senate, or by a Member or Members of the Senate designated by such chairman; and shall be introduced (by request) in the House by the chairman of the Committee on Government Operations of the House, or by a Member or Members of the House designated by such chairman.

"(d)(1) A resolution with respect to a consolidation plan shall be referred to the committee of the Senate and the House of Representatives having primary jurisdiction over such resolution under the rules of the Senate and the House of Representatives.

"(2) Each committee of primary jurisdiction to which the resolution is referred shall consider the consolidation plan and shall make its recommendations to the Senate or the House of Representatives, as the case may be, within sixty calendar days of continuous session following the date of its transmittal to Congress.

"(3) Any resolution with respect to a consolidation plan affirmatively reported by the committee with primary jurisdiction which contains any matter within the jurisdiction of any other committee shall be referred to such other committee for a period of fifteen days of continuous session of Congress if the chairman of such other committee requests such referral no later than the day following the day on which the resolution is reported by the committee with primary jurisdiction. In any case in which such other committee fails to report the resolution within the period herein prescribed, such committee shall be automatically discharged from further consideration of such resolution on the sixteenth day of continuous session of Congress following the day on which such resolution is referred to such committee.

"(4) If the committee having primary jurisdiction over a resolution with respect to which a consolidation plan has been referred has not reported it at the end of sixty days of continuous session of Congress after its transmittal, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

"(e) When the last committee to which the resolution has been referred has reported, or has been discharged from further consideration of a resolution with respect to a consolidation plan, pursuant to (d)(3)(4), it is in order at any time thereafter (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is privileged in the Senate and highly privileged in the House of Representatives and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

"(f) For purposes of this section and section 1003 of this title—

"(1) continuity of session is broken only by an adjournment of Congress sine die; and

"(2) the days in which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the ninety-day period.

"(g) The provisions of subsections (c) through (k) of this section and of paragraph (4) of section 1001 of this title are enacted by the Congress—

"(1) as an exercise of the rulemaking power of Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in such subsections and paragraph; and they supersede other rules to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 1006. Effect on other laws and regulations

"(a) To the extent that any provision of a consolidation plan which becomes effective under this chapter is inconsistent with any provision of law enacted prior to the effective date of the plan, the provision of the consolidation plan shall control to the extent that such plan specifies the provision of law to be superseded, consistent with section 1003(b)(2).

"(b) Within a reasonable time after the consolidation plan becomes effective, modifications shall be made in any regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, or other action made, prescribed, issued, granted, or performed with respect to any matter affected by a consolidation plan to reconcile any inconsistency as thereof with the consolidation plan, as set forth in that plan, but otherwise shall continue in effect.

"(c) A consolidation plan shall provide for the transfer of appropriations or other budget authority in such manner that the aggregate amount of appropriations and other budget authority available for carrying out the Federal assistance programs involved in such plan may be available for any or all such programs, and the aggregate amount of authorizations of appropriations or other budget authority for such programs shall be deemed an authorization of appropriations and other budget authority for any or all of such programs. The appropriations or portions of appropriations unexpended by reason of operation of this chapter may not be used for any purpose, but shall revert to the Treasury Department. The Office of Management and Budget shall report to the Appropriations Committees, as part of their annual budget submission, on the saving effected under the consolidation plan.".

(b) The table of chapters for part I of title 5 United States Code, immediately preceding chapter 1, is amended by adding at the end thereof the following new item:

"10. Federal Assistance Programs Consolidation................................ 1001.".

TITLE II—FINANCIAL MANAGEMENT AND AUDIT OF FEDERAL ASSISTANCE PROGRAMS

PURPOSE

SEC. 201. It is the purpose of this title—

(1) to improve the financial management of Federal assistance programs;

(2) to promote the efficient use of audit resources;

(3) to relieve State and local governments and nonprofit organizations of the costs and paperwork burdens due to conflicting and redundant requirements of Federal assistance programs; and

(4) to provide for the establishment of consistent requirements for the financial management and audit of Federal assistance provided to or administered by State and local governments and nonprofit organizations.

DEFINITIONS

SEC. 202. As used in this title —

(1) the term "financial and compliance audit" means a systematic review or appraisal of a recipient of Federal assistance to determine and report whether

the financial operations of the recipient are properly conducted and financial reports are presented fairly and whether the entity has complied with significant compliance requirements contained in laws and regulations that can materially affect the entities' financial operations, conditions, and reports.

(2) The term "public accountants" means certified public accountants, or licensed public accountants licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State.

(3) The term "independent auditors" means properly constituted State and local government audit agencies or public accountants, who have no direct relationship with the functions or activities being audited or with the business conducted by any of the officials of the government agency or unit being audited.

(4) The term "generally accepted auditing standards" means the auditing standards set forth in the financial and compliance element of the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions", issued by the Comptroller General of the United States and incorporating the audit standards of the American Institute of Certified Public Accountants.

(5) The term "Federal assistance" means any assistance provided by an agency in the form of grants, loans, loan guarantees, property, cooperative agreements or technical assistance to State or local governments or other recipients, except that such term does not include direct Federal cash assistance to individuals, contracts for the procurement of goods and services for the United States, or insurance.

(6) The term "local government" means any unit of government within a State, a county, borough, municipality, city, town, township, parish, local public authority, special district, intrastate district, council of governments, other interstate government entity, or any other instrumentality of local government.

(7) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the North Mariana Islands.

(8) The term "entity" means a first level organizational unit of a State or local government or nonprofits providing services to such unit.

(9) The term "nonprofit organization" means an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from tax-

ation under section 501(a) of such Code or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(10) The term "federally recognized Indian tribe" means an organization the Bureau of Indian Affairs as defined in Public Law 93-262, 82, April 12, 1974, 88 Stat. 77.

GENERAL FINANCIAL MANAGEMENT AND AUDIT

SEC. 203. (a) In order to insure that Federal accountability systems do not impose unnecessary, conflicting, and duplicative accounting, auditing, and reporting requirements upon State and local governments, nonprofit organizations, and federally recognized Indian tribes who are recipients of Federal assistance and in order to reduce the costs, paperwork, and regulatory burdens associated with Federal assistance programs, the Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall, consistent with applicable law, develop, establish, and maintain for use by all Federal agencies standard accounting, auditing, and financial management policies, procedures, and requirements for the administration, accounting, and financial auditing of grants, contracts, cooperative agreements, and other forms of Federal assistance to State and local governments, nonprofit organizations and federally recognized Indian tribes. Any such policy procedure, or requirement shall not conflict with any applicable audit standard developed by the Comptroller General of the United States. Standard policies, procedures, and requirements developed by the Director of the Office of Management and Budget pursuant to this section shall include—

(1) terms, definitions, and conditions used in conjunction with grants, contracts, cooperative agreements, and other forms of Federal assistance to State and local governments;

(2) generally accepted accounting principles and standards as required for financial accounting and reporting;

(3) uniform requirements for assistance application forms;

(4) uniform principles and standards for sound financial management and auditing; and

(5) uniform payment policies for grants, contracts, cooperative agreements, and other forms of Federal assistance.

(b) The Director of the Office of Management and Budget shall prescribe regulations to carry out the standard policies, procedures, and requirements established pursuant to subsection (a). Any such regulations shall be binding on all Federal departments and agencies, and assistance recipients.

Such directives shall prescribe effective means to coordinate Federal, State, and local audits of assistance programs.

ACCOUNTING AND AUDITING PROCEDURES AND REQUIREMENTS

SEC. 204. (a) At least once every two years, there shall be a single independent financial and compliance audit of—

(1) State and local governments, or State and local governmental entities and the subgrantees of such State and local governments or governmental entities; and

(2) nonprofit organizations or entities of nonprofit organizations and the subgrantees of such nonprofit organizations or entities,

which receive Federal assistance. Any such audit shall include an evaluation of the accounting and control systems of the recipient of Federal assistance and of the activities by the recipient to comply with the financial and performance requirements of grants received by the recipient from the Federal Government. Audits carried out pursuant to this section shall be audits of the recipient, rather than audits of individual grants or programs. In the case of any recipient of Federal assistance which receives less than $100,000 per year, the audit required by this section shall be conducted at least once every five years, but not more frequently than once every three years, unless there is evidence of fraud or other violation of Federal law in connection with such assistance.

(b) A State government shall have the responsibility for financial and compliance audits of the State government or State governmental entities receiving Federal assistance, and the subgrantees of such government or entities. A local government shall have the responsibility for financial and compliance audits of the local government, local governmental entities receiving Federal assistance, and the subgrantees of such government or entities. A nonprofit organization shall have responsibility for financial and compliance audits of the nonprofit organization or entities of the nonprofit organization receiving Federal assistance and the subgrantees of such nonprofit organizations or entities unless by law, the State or local government has such responsibility, in which event the State or local government, as appropriate, shall have the responsibility for such audits. The audits shall be made by independent auditors in accordance with generally accepted auditing standards and shall include an opinion as to whether the recipient's accounting policies and financial statements follow generally accepted accounting principles and standards.

(c)(1) The Federal Government shall be responsible, through the quality review process established pursuant to subsection (d), for assuring that financial and compliance audits conducted by independent auditors meet generally accepted auditing standards. Nothing in this title limits the authority of Federal agencies to make audits of Federal assistance to State and local governments, State and local governmental entities, and the subgrantees of such State and local government or governmental entities: *Provided, however,* That if independent audits arranged for by State or local governments meet generally accepted auditing standards and other requirements established pursuant to subsection (d) Federal agencies shall rely on those audits and any additional audit work shall build upon the work already done.

(2) The Federal Government is responsible for conducting, or contracting (to such extent or in such amounts as are provided in appropriations Acts) for the conduct of, audits which are not financial and compliance audits.

(3) Nothing in this title limits the Federal Government's responsibility or authority to enforce Federal law or regulations, procedures, or reporting requirements arising pursuant thereto.

(d) The Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall establish and approve a quality review process that will assure the proper performance of audits. Audits performed by Federal, State, or local government audit agencies which have been approved pursuant to such review process shall be accepted by all Federal agencies making and administering grants.

(e) The Director of the Office of Management and Budget shall prescribe appropriate means for the reimbursement of independent auditors for actual expenses incurred for such parts of audits as are performed as a requirement of a Federal assistance program, including provisions for—

(1) reimbursement for such expenses, either directly or through the recipient jurisdiction; and

(2) equitable financial settlements when such audits fail to meet the standard policies, procedures, and requirements developed pursuant to section 203.

TITLE III—ADMINISTRATION OF GENERALLY APPLICABLE FEDERAL ASSISTANCE REQUIREMENTS

SEC. 301. The Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201 et seq.) is amended by adding at the end thereof the following new title:

"TITLE VII—ADMINISTRATION OF GENERALLY APPLICABLE FEDERAL ASSISTANCE REQUIREMENTS

"STATEMENT OF PURPOSE

"SEC. 701. It is the purpose of this title—

"(1) to encourage simplification, standardization, and coordination to the maximum extent feasible in the administration of all national policy requirements which are generally applicable to Federal assistance consistent with the goals and purposes of such requirements;

"(2) to improve the procedures by which such requirements are developed, implemented, and evaluated;

"(3) to reduce the overall administrative and cost burdens of such requirements on assistance recipients; and

"(4) to eliminate those requirements that are found to be unnecessary, infeasible, or inappropriate.

"DEFINITIONS

"SEC. 702. As used in this title—

"(1) the term 'generally applicable requirement' means any requirement—

"(A) with which an assistance recipient is required to comply under Federal law or administrative rule or regulation in order to achieve national policy objectives; and

"(B) which applies to programs administered by two or more assistance agencies, regardless of whether such requirement is contained in one or more of such laws, rules, or regulations;

"(2) the term 'designated agency' means a Federal agency designated by the President pursuant to this title, or a Federal agency which has been designated by law, to coordinate the preparation and implementation of national policy assistance standards for specified generally applicable requirements and report on the implementation of such requirements;

"(3) the term 'assistance recipient' means a State or local government or other organization that receives Federal assistance;

"(4) the term 'national policy assistance standards' means a set of guidelines, statements of objectives, standards, or other documents issued to achieve the objectives of certain generally applicable requirements in a manner which is, to the greatest extent feasible, substantially uniform among affected assistance programs and is designed to take into account characteristics of classes of recipients or types of assistance;

"(5) the term 'assistance agency' means a Federal agency that administers a Federal assistance program; and

"(6) the term 'Federal assistance' means any assistance provided by an agency in the form of grants, loans, loan guarantees, property, cooperative agreements, or technical assistance to State or local governments or other recipients, except that such term does not include direct cash assistance to individuals, contracts for the procurement of goods and services for the United States, or insurance.

"ASSIGNMENT OF DESIGNATED AGENCIES

"SEC. 703. (a) Within one hundred and twenty days after the date of enactment of this title, and from time to time thereafter as he deems appropriate, the President shall designate, consistent with any applicable law, including reorganization plans, a single Federal agency to coordinate the preparation of national policy assistance standards for one or more generally applicable requirements for Federal assistance and to report on the implementation of such requirements. As determined by the President, designated agencies shall be responsible for generally applicable requirements in various subject areas such as—

"(1) labor practices requirements;

"(2) public employee standards;

"(3) equal services requirements;

"(4) equal employment requirements;

"(5) access to Government information;

"(6) procurement standards;

"(7) planning requirements;

"(8) financial and administrative requirements;

"(9) citizen participation requirements; and

"(10) environmental protection requirements.

"(b) In evaluating Federal agencies for designation under subsection (a), the President shall consider—

"(1) the relationship of the generally applicable requirement to the functions and program responsibilities of the agency.

"(2) the capacity of the agency to effectively carry out the responsibilities of a designated agency; and

"(3) the smallest number of designated agencies which is practicable for the promulgation of national policy assistance standards for implementing related generally applicable requirements.

"(c) If any generally applicable requirement is established pursuant to a statute or administrative rule or regulation enacted or adopted after the date of enactment of this title, the President shall, in accordance with subsections (a) and (b), designate a single Federal agency to coordinate preparation of national policy standards for such requirement and report on the implementation of such requirement.

"ISSUANCE OF NATIONAL POLICY ASSISTANCE STANDARDS

"SEC. 704. (a) Within one year of the date of designation by the President, each designated agency shall develop national policy assistance standards in its field of designated responsibility in consultation and cooperation with affected Federal agencies, assistance recipients, and other interested parties. If any generally applicable requirement is affected or established by a statute or administrative rule or regulation enacted or adopted after the date of enactment of this title, the President shall set a specific date for the preparation of national policy assistance standards under this section which shall be not later than one year after the date of enactment of such law.

"(b) The designated agency shall consult, in accordance with any procedures established under section 707(b) of this title, with affected assistance recipients, beneficiaries, and other interested parties at the earliest possible time after the date on which such agency is designated by the President under section 703.

"(c) National policy assistance standards for generally applicable requirements shall be consistent with applicable law and, to the maximum extent possible—

"(1) be simple and clear;

"(2) minimize the reporting required of assistance recipients consistent with the requirements of the Paperwork Reduction Act (Public Law 96-511) and the Regulatory Flexibility Act (Public Law 96-354);

"(3) minimize compliance costs and burdens such standards place upon assistance recipients;

"(4) include standard compliance procedures, provisions for technical assistance, and other facilitative procedures; and

"(5) be accompanied by a list, based on existing relevant statutory provisions, of the Federal assistance programs to which such standards apply.

"(d) Within one hundred and twenty days after a designated agency publishes national policy assistance standards prepared under this section, each assistance agency administering a Federal assistance program to which such standards apply shall implement and conform to such standards unless the President establishes, after review, a longer period for implementation of such standards in order to lessen the impact of such standards on affected assistance recipients. Each assistance agency shall be responsible for insuring that affected assistance recipients comply with such standards.

"(e) Each designated agency shall coordinate the implementation of relevant national assistance policy standards in accordance with the procedures established under section 707(b) and shall ensure that revisions or additions to such standards become effective only on the first day of each fiscal year.

"IMPLEMENTATION AND ENFORCEMENT ROLES OF FEDERAL AGENCIES

"SEC. 705. (a) The head of each assistance agency shall designate a senior official of the agency responsible for the formulation of policy relating to the administration of Federal assistance to—

"(1) coordinate compliance activities under generally applicable standards throughout the agency;

"(2) ensure the complete and active participation of the agency in the development and implementation of national policy assistance standards; and

"(3) represent the position of the agency on questions relating to generally applicable requirements and associated national policy assistance standards.

"(b) One year following the date of enactment of this title, and except as otherwise provided by law, the head of an assistance agency is authorized, in his discretion, to certify and accept State or local government laws, regulations, directives, standards, reporting requirements, and compliance monitoring and enforcement procedures if the agency head determines that such State or local government requirements are at least equal to national policy assistance standards and that such State or local government requirements are fully complied with and enforced. Nothing in this subsection limits the assistance agency's responsibility or authority to enforce

Federal law or its regulations, procedures, or reporting requirements arising thereunder. For good cause an assistance agency may rescind any certification issued under this subsection, but shall provide the State or local government with due notice prior to taking any such action and provide such government with an opportunity to demonstrate why the agency action should not be taken.

"(c) Federal agencies administering Federal assistance programs shall take appropriate action, including the provision of technical assistance, to assist affected assistance recipients in their efforts to comply with applicable national policy assistance standards.

"LEGISLATION TO REMOVE IMPEDIMENTS TO IMPLEMENTATION

"SEC. 706. (a) If a designated agency is unable to publish national policy assistance standards pursuant to section 704 due to conflicting or inconsistent provisions of law, or due to other factors which have prevented the development of such standards in accordance with the provisions of this title, the agency shall report its inability to develop such standards to the President. After receipt of such report, the President may direct the agency to prepare a proposed bill to remove any such impediments to the development of such national policy assistance standards and to submit such bill to the President for transmission to the Congress.

"(b) If the President determines, after study, that certain Federal assistance programs should be exempted from any generally applicable requirement established by statute or that basic components of any such requirement are inappropriate, inefficient, or poorly suited to effective management, he may prepare a proposed bill to repeal, restrict, or revise the scope or structure of such requirement and shall submit to the Congress his determination under this subsection and such proposed bill.

"GENERAL OVERSIGHT

"SEC. 707. (a) The President may delegate to the Director of the Office of Management and Budget or to the head of any other Federal agency responsibility for monitoring the overall implementation of this title, except that the President may not delegate the authority to name designated agencies under section 703.

"(b) In carrying out the provisions of this title, the President, or in carrying out any responsibility delegated under subsection (a), the Director of the Office of Management and Budget or the head of a Federal agency, shall—

"(1) establish a uniform procedure for the development, implementation, and evaluation of national policy assistance standards or other guidance and instructions to recipients required by this title, including provisions to ensure the active participation of assistance agencies, program beneficiaries, and assistance recipients to the maximum extent possible.

"(2) review the administration of generally applicable requirements to improve the effectiveness of such requirements, including working with the designated agencies to ensure effective application of national policy assistance standards to the requirements of particular assistance programs or to the recipients of such programs.

"(3) establish a procedure for resolving disputes and conflicts between designated agencies, assistance agencies, and assistance recipients over the preparation and implementation of national policy assistance standards.

"(4) test and evaluate techniques for certification by a State or local government that its laws, regulations, directives, standards, reporting requirements, and compliance monitoring and enforcement procedures are at least equal to national policy assistance standards. The Director shall establish policies for Government-wide use of those techniques found to be most effective and for resolution of disputes and conflicts that may arise from certification.

"(5) prepare, publish, and annually update a catalog of all generally applicable requirements and the applicable national policy assistance standards for generally applicable requirements currently in effect.

"(c) Should it become evident that implementation of a national policy assistance standard will lead to serious, unanticipated consequences or disruption of assistance programs, the President, or the Director of the Office of Management and Budget, or head of any other Federal agency delegated responsibility for monitoring the overall implementation of this title pursuant to subsection (a), is authorized to suspend the implementation of such standard for a period not to exceed one hundred and eighty days. If the suspended national policy assistance standard is mandated by statute, the President, or the Director, or the head of a Federal agency shall directly notify the appropriate committees of the Senate and the House of Representatives of the suspension and the reasons for it and, if warranted, make recommendations for legislative action.

"(d) In carrying out any responsibility delegated under this section, the President, or the Director of the Office of Management and Budget, or the head of a Federal agency shall keep the Congress fully informed of his actions and related agency activities.".

SEC. 302. Nothing in this title limits in any way any existing authority the President, the Office of Management and Budget, or the Director thereof may otherwise have under the laws of the United States, with respect to the administration of Federal assistance requirements.

TITLE IV—JOINT FUNDING SIMPLIFICATION ACT AMENDMENTS

SEC. 401. (a) Section 3 of the Joint Funding Simplification Act of 1974 (88 Stat. 1604; 42 U.S.C. 4252) is amended—

(1) by striking out "may" after the word "agreement" in subsection (b) and inserting in lieu thereof "shall";

(2) by striking out subsection (b)(1); and

(3) by renumbering subsection (b)(2) as subsection (b)(1), subsection (b)(3) as subsection (b)(2), subsection (b)(4) as subsection (b)(3), and subsection (b)(5) as subsection (b)(4).

(b) Section 5 of such Act is amended—

(1) by striking "joint management funds" in the first sentence and inserting in lieu thereof "integrated funding process".

(c) Section 6 of such Act is amended—

(1) by striking "may" in the first sentence of subsection (6)(a) and inserting in lieu thereof "shall";

(2) by striking "may" in the first sentence of subsection (6)(c) and inserting in lieu thereof "shall"; and

(3) by striking "may" in the second sentence of subsection (6)(c) and inserting in lieu thereof "shall".

(d) Section 8 of such Act is amended—

(1) by amending subsection (a) to read as follows:

"SEC. 8. (a) In order to provide for the more effective administration of funds drawn from more than one Federal program or appropriation in support of projects under this Act, there may be established an integrated funding process with respect to such project through which a proportionate share of the funds from each affected program or appropriation needed for payments to the recipients may be made available.".

(2) by amending subsection (b) to read as follows:

"(b) Any funds made available through an integrated funding process shall be subject to such arrangements, not inconsistent with this section and other applicable law, as may be entered into by the Federal agencies concerned and shall assure the availability of necessary information to those agencies and to the Congress. These agreements also shall provide that the agency administering the funds shall be responsible and accountable by program and appropriation for the amounts provided from each contributing program or appropriation and shall include procedures for determining, from time to time, whether amounts available are in excess of the amounts required, and for advising the participating agencies concerning the appropriate disposition of that excess according to the applicable appropriations, subject to fiscal year limitations. Excess amounts applicable to expired appropriations will be lapsed.".

(3) by striking out "account in a joint management fund" in the first sentence of subsection (c) and inserting in lieu thereof "integrated funding process";

(4) by striking out "from the fund" in the first sentence of subsection (c);

(5) by striking out "fund" after the words "for administering the" in subsection (c), and inserting in lieu thereof the word "process";

(6) by striking out "joint management fund" in subsection (d) and inserting in lieu thereof "integrated funds";

(7) by striking out "from such fund" in subsection (d);

(8) by striking out "a joint management fund" in subsection (e) and inserting in lieu thereof "an integrated funding process";

(9) by striking out "to" after the word "transferred" in subsection (e) and inserting in lieu thereof "for"; and

(10) by striking out "account" in subsection (e).

(e) Section 12 of such Act is amended by adding the following new subsection (7):

"(7) the term 'integrated funding process' means the administration of the aggregate amount of funds authorized by interagency agreement for disbursement to a single recipient through a single Federal disbursement method. The integrated funding process is administered on behalf of two or more Federal agencies in support of a joint funding process.".

TITLE V—INTEGRATED ASSISTANCE

SEC. 501. The Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201 et seq.) is amended by adding at the end thereof the following new title:

"TITLE VIII—INTEGRATED ASSISTANCE

"STATEMENT OF PURPOSE

"SEC. 801. It is the purpose of this title to increase the substantive effectiveness and management efficiency of Federal assistance programs by—

"(1) permitting recipients to exercise greater discretion and flexibility in the use of Federal assistance;

"(2) encouraging the use of simplified administrative processes and reporting requirements; and

"(3) fostering recipient initiative and innovative approaches to priorities and problems that cross existing statutory assistance categories.

"DEFINITIONS

"SEC. 802. As used in this Act—

"(1) The term 'Administrator' means the head of a Federal agency responsible for one or more Federal assistance programs.

"(2) The term 'assistance' or 'assistance program' means a grant or cooperative agreement as determined by the Administrator under the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) for which State or local governments are the sole qualified recipients.

"(3) The term 'covered program' means any assistance program for which an Administrator has responsibility which falls under a single functional category as set forth in the Budget of the United States Government transmitted pursuant to section 201(i) of the Budget and Accounting Act of 1921 and which is included in an integrated program plan.

"(4) The term 'base fiscal year' means, for each covered program, the fiscal year prior to the year in which the covered program is included under an approved integrated program plan.

"(5) The term 'integrated program plan' means a document, submitted under section 803 of this title as part of an assistance application, which sets forth a plan of activities and related expenditures to carry out the objectives of this title and the covered programs which are included.

"INTEGRATED PROGRAM PLAN

"SEC. 803. (a) Each applicant for Federal assistance under this title may—

"(1) submit an integrated program plan which represents an integrated approach to planning, development, and implementation of the covered programs;

"(2) provide for the coordination and administration of each integrated program plan by a single agency designated by the applicant's chief executive officer.

"SEC. 804. (a)(1) The Administrator shall establish requirements governing approval of an integrated program plan. These requirements shall be designed—

"(A) to increase the substantive effectiveness and management efficiency of covered programs;

"(B) to encourage and permit State and local governments to redirect a portion of the resources in the covered programs to problems and priorities of such governments that may cross existing statutory assistance categories; and

"(C) to improve the effectiveness and productivity of assistance programs by reducing rigidity, duplication of effort, and unnecessary expenditures.

"(2) In developing its integrated program plan, an applicant may propose to transfer funds among the various covered programs included in such plan, except that the applicant may in no event propose to transfer from any covered program an amount in excess of 20 per centum of the amount of assistance it was allocated for such program in the base fiscal year.

"(3) In reviewing applications under this title, the Administrator shall also consider the degree to which the applicant (i) has considered the effects of each program on the other(s) included in the integrated program plan and (ii) has, or is developing supporting data bases, planning, and evaluation processes to assist in implementing the proposed plan.

"(b) The Administrator shall complete review of the applicant's proposed plan in a timely fashion and may approve it in whole or in part. In the event of disapproval, the Administrator shall notify immediately the applicant in writing but in no instance shall such notification occur more than thirty days after the date of such disapproval. If notice from the Administrator concerning an applicant's proposed plan is not received within ninety days of its submission, the plan shall stand approved as submitted. Disapproval of an integrated assistance plan shall not in any way affect a recipient's application through the established award process for assistance covered by the integrated assistance plan.

"(c) The Administrator shall not approve an integrated program plan unless he determines—

"(1) that the objectives of this title and of the covered programs are adequately addressed therein;

"(2) that the requirements promulgated pursuant to section 804(a)(1) of this title have been met; and

"(3) that the proposed plan adequately considers cross-program consequences.

"(d) The Administrator shall not award integrated assistance to a State or local government unless the duly authorized official has signed the assistance application containing the integrated program plan.

"AUTHORITY; LIMITATIONS

"SEC. 805. (a) From sums appropriated under the covered programs, the Administrator shall award integrated assistance in accordance with the integrated program plan approved under section 804 to States and local governments to enable them to carry out the objectives of this title and of the covered programs.

"(b) An approved integrated program plan shall remain in effect for only the fiscal year in which application was made. The Administrator shall not renew an integrated program plan unless he determines, based on evaluation of the recipient's performance and its current proposed plan, that the recipient's program has and will effectively serve the purposes of this title and the covered programs included in its integrated program plan.

"SEC. 806. In developing its integrated program plan, the State shall provide for adequate consultation with the affected local governments.

"ACCOUNTABILITY

"SEC. 807. (a) The Director of the Office of Management and Budget shall, within thirty days following enactment of this title, establish guidelines which shall guide the Administrator of each agency in reviewing the integrated program plans submitted by State and local applicants. Such guidelines shall establish procedures which ensure that recipient accountability for expenditures under an approved integrated program plan is provided for by the plan as a whole in lieu of accounting for expenditures by program.

"(b) Within sixty days following the date upon which the Director issues guidelines pursuant to subsection (a), the Administrator shall provide for the receipt of integrated program plans from the State and local applicants.

"SUNSET PROVISION; REPORT TO CONGRESS

"SEC. 809. This title shall be applicable to assistance awarded for fiscal year 1982 and shall expire on September

30, 1986. The Director of the Office of Management and Budget shall submit to the Congress no later than September 30, 1985, a report describing the extent to which State and local governments have established and implemented integrated program plans, evaluating the effectiveness of covered programs, and recommendations with respect to continuing integrated assistance.".

TITLE VI—MISCELLANEOUS

SINGLE STATE OR LOCAL AGENCY OR ORGANIZATION UNIT PROVISIONS

SEC. 601. Title II of the Intergovernmental Cooperation Act of 1968 (43 U.S.C. 4214) is amended to read as follows:

"SEC. 204. Notwithstanding any other Federal law which provides that (1) a single or specific State or local governmental agency or other organizational unit be utilized or designated to receive, supervise, or otherwise administer any Federal assistance program, or (2) a single or specific pattern of internal organization or procedure be utilized or designated to administer any Federal assistance program, upon certification by the appropriate executive or legislative authority of the State or local government responsible for determining or revising the organizational structure of such government that such provisions prevent the establishment of the most effective and efficient organizational arrangements within the State or local government, the head of the Federal department or agency administering the program shall waive such provisions and approve other State and or local administrative structure or arrangements unless he determines that the objectives of the Federal statute authorizing the program will be significantly endangered. The head of the Federal agency or department shall set forth in writing the reasons for such determination and shall give the appropriate State or local govenment authority sufficient opportunity to respond.

"STANDARD MAINTENANCE-OF-EFFORT REQUIREMENT

"SEC. 205. (a) Notwithstanding any other provisions of law, all requirements of Federal assistance programs intended to insure that the granting of Federal assistance to State and local goverments will not result in a reduction in relevant State or local governmental expenditures or the substitution of Federal funds for State and local funds previously made available for the activities aided are hereby repealed.

"(b) When the Congress hereafter desires to ensure that the granting of Federal assistance to State and local governments will not result in a reduction in relevant State or local governmental expenditures or the substitution of Federal funds for State or local funds previously made available for the activities aided, the Congress shall incorporate in the legislation authorizing such a maintenance-of-effort provision providing that—

"(1) the amount available for expenditures by such State or local government or by its subgrantees for the activities aided for the fiscal year for which the assistance is sought shall not be less than the average expended based on recurring expenses for such activities during the preceding two fiscal years; otherwise, the Federal amount will be reduced proportionate to the State or local reductions below such an average; and

"(2) on the request of an assistance recipient, the Federal agency head may waive the requirement established by paragraph (1) if he determines, in accordance with regulations and criteria established by the Office of Management and Budget, that application of the requirement would result in extraordinary fiscal hardship.

"(c) For the purpose of standardization, the Congress shall limit itself to the elements specified in subsection (a) in the prescription of maintenance-of-effort requirements, and shall declare that such elements apply to subrogated funds.

"STATE OVERSIGHT OF FEDERAL FUNDS

"Sec. 206. Notwithstanding any other provision of law, nothing in any Federal statute or implementing regulation shall diminish or negate, nor shall be construed as superseding, procedures established by State law or practice for appropriating and expending Federal assistance funds, for designating, consistent with section 203 of this Act, the State agency to administer or implement any grant program, or for reviewing State plans and applications for Federal assistance.".

AMERICAN BAR ASSOCIATION

SECTION OF PUBLIC
CONTRACT LAW

1980-81

CHAIRMAN
O. S. Hiestand
1800 M Street NW
Suite 700 North
Washington DC 20036
202/872-5160

CHAIRMAN ELECT
David L. Hirsch III
One Golden Shore
Long Beach CA 90802
213/435-6676

SECRETARY
Robert D. Wallick
1250 Connecticut Avenue NW
5th Floor
Washington DC 20036
202/862-2050

SECTION DELEGATE
Allan J. Joseph
600 Montgomery Street
21st Floor
San Francisco CA 94111
415/434-4000

IMMEDIATE AND PREVIOUS
PAST CHAIRMEN
Theodore M. Kostos
2300 Two Girard Plaza
Philadelphia PA 19102

George M. Coburn
1700 K Street NW Suite 1100
Washington DC 20006

COUNCIL MEMBERS
Ruth C. Burg
200 Stovall Street
Alexandria VA 22332

Roger N. Boyd
1100 Connecticut Avenue NW
Washington DC 20036

S. Neil Hosenball
400 Maryland Avenue SW
Washington DC 20546

Clarence T. Kipps Jr.
1700 Pennsylvania Avenue NW
Washington DC 20006

Thomas J. Madden
1575 Eye Street NW
Washington DC 20006

Ronald E. Martell
55 East Fifth Street
St Paul MN 55101

James J. Myers
60 State Street
Boston MA 02109

Lawrence P. Stich
10215 Fernwood Road
Bethesda MD 20034

Carl L. Vacketta
1800 Massachusetts Avenue NW
Washington DC 20036

EDITOR, PUBLIC CONTRACT
LAW JOURNAL
Paul Shnitzer
600 New Hampshire Avenue NW
Washington DC 20037

EDITOR, PUBLIC CONTRACT
NEWSLETTER
Martin J. Harty
9926 Rand Drive
Burke VA 22015

YOUNG LAWYERS DIVISION
REPRESENTATIVE
Daniel P. Cosgrove
2314 North Tracy
Alexandria VA 22311

LAW STUDENT DIVISION
REPRESENTATIVE
Linda A. Caruso
8502 Irvington Avenue
Bethesda MD 20034

BOARD OF GOVERNORS
LIAISON
Marshall J. Doke Jr.
4200 Republic National
Bank Tower
Dallas TX 75201

SECTION ADMINISTRATOR
Marilyn Neforas
American Bar Association
1155 East 60th Street
Chicago IL 60637
312/947-3861

WRITER'S ADDRESS AND TELEPHONE

1800 M Street, N.W.
Suite 700 North
Washington, D.C. 20036
202/872-5160

February 11, 1981

The Honorable William V. Roth
Chairman, Committee on Governmental
 Affairs
United States Senate
3308 Dirksen Senate Office Building
Washington, D. C. 20510

Re: Comments -- S. 878, The Federal
Assistance Reform Act of 1980

Dear Senator Roth:

On behalf of the Public Contract Law Section for the American Bar Association, I submit for your consideration the enclosed comments concerning the Federal Assistance Reform Act of 1980, S. 878, 96th Congress, Second Session. The views expressed are being presented on behalf of the Public Contract Law Section, and have not been approved by either the House of Delegates or the Board of Governors of the American Bar Association. As a consequence, they do not represent the views of the American Bar Association as a whole.

The Public Contract Law Section supports the principles of S. 878 which we feel represent a positive effort to deal with many of the critical problems in assistance programs. We have made numerous recommendations and comments in this memorandum which, if adopted, we believe will serve to strengthen and improve the bill. Aside from offering these remarks, to the extent that members of the Section of Public Contract Law, American Bar Association, can be of service to the Senate Committee on Governmental Affairs, we offer any help we may be able to give.

Sincerely,

O. S. Hiestand
Chairman

OSH/drb
Enclosures

PUBLIC CONTRACT LAW SECTION,
AMERICAN BAR ASSOCIATION COMMENTS
ON S.878, FEDERAL ASSISTANCE REFORM ACT OF 1980

I. INTRODUCTION AND SUMMARY OF LEGISLATION

The Bill, as reported by the Senate Committee on Governmental Affairs on September 19, 1980 and passed by the Senate on December 1, 1980, consists of five titles. Title I establishes a procedure for Executive and Congressional consideration of consolidation plans. Title II provides for the establishment of consistent requirements for the financial management and audit of Federal assistance administered by State and local governments. Title III is technically a separate Act in itself, the "Integrated Grant Development Act of 1980," and is a replacement for the recently expired Joint Funding Simplification Act of 1974. Title IV, which amends the Intergovernmental Cooperation Act of 1968, establishes a mechanism authorizing the President to designate single agencies to coordinate and implement one or more generally applicable, uniform, federal-wide cross-cutting requirements. Title IV also directs that Federal grant administering agencies accept certifications from State or local governments that they are in compliance with State or local requirements which are equivalent to the Federal cross-cutting requirements. Once certified, the Federal grant administering agencies are in practical terms, due to staff and resource limitations, constrained from conducting compliance monitoring unless the certification is rescinded for good cause. Title V contains a variety of provisions designed to allow assistance recipients increased flexibility or free them from Federal restraints.

II. TITLE I OF S.878

A. General Comment

Title I represents a positive attempt to restructure the broad array of Federal assistance programs. Its stated purposes are desirable, and we endorse them as ideals to achieve. The Section of Public Contract Law endorses the concept of consolidation embodied in Title I of S.878. There is a clear need, recognized by the ACIR and others, to eliminate duplication and conflict in existing grant programs. Consolidation, as proposed in S.878, is a long needed step in improvement of the Federal assistance system. The Congress is in the best position to structure the process by which it considers legislation and not this Council. Accordingly, the Council makes no comments on that aspect of the legislation concerning the manner in which consolidation proposals are considered by the Congress.

B. Specific Provisions of Title I/Technical and Legal Problems.

This section discusses specific provisions of Title I and the problems they present.

1. Definition of Federal Assistance, Sec. 101(a), p. 41, lines 11-18, proposed 5 U.S.C. § 1001(3).

Section 101(a) of Title I, at p. 41, lines 11-18, consisting of proposed 5 U.S.C. § 1001(3), defines "federal assistance" without reference to existing definitions of federal assistance in other laws, especially P.L. 95-224, the Federal Grant and Cooperative Agreement Act of 1977. There also appears to be some difference with respect to the definition of the phrase in other titles. See Title II of the Bill, Sec. 202 (6), pp. 54-55, lines 24-25 and 1-7, respectively; Title III, Sec. 303(1), p. 62, lines 3-7, and Title IV, Sec. 702(6), p. 76, lines 7-11. We recommend that "federal assistance" be defined consistently with P.L. 95-224 and consistently within S.878.

2. Definition of Functionally Related Programs Sec. 101(a), p. 41, lines 19-22, proposed 5 U.S.C. § 1001(4)

Section 101(a) of Title I, of the Bill at p. 41, lines 19-22, consisting of proposed 5 U.S.C. § 1001(4), defines "functionally related programs," by stating that such programs are those which have "in essence" "the same major purposes and provide assistance to the same types of beneficiaries and recipient group."

This definition could, for example, exclude from consolidation direct water and sewer assistance programs and economic development public works grants (including water and sewer) programs, because their enabling legislation have different stated purposes.

We recommend a much sharper definition of "functionally related programs." Proposed 5 U.S.C. § 1001(4), as presented in Title I of the Bill should be deleted and replaced by a definition similar to the following to read:

> "(4) the term 'functionally related programs' refers to those programs which can be consolidated:
>
> (1) to facilitate achievement of the purposes and goals of the programs; and
>
> (2) to allow those recipients of funds who are eligible under each separate program to continue to be eligible when those separate programs are consolidated while insuring that the intended beneficiaries under each program continue to receive the benefits of the program under the criteria and conditions under such programs."

3. Criteria for Measuring the Need to Consolidate Programs and Timing, Sec. 101(a), pp. 42-43, lines 21-24 (p. 42) and 1-8 and 9-24 (p. 43), respectively, proposed 5 U.S.C. §§ 1002 and 1003(a).

The criteria for measuring the need to consolidate federal assistance programs appear to be overlapping and duplicative.

It should be noted that lines 15-19, at p. 43 as now drafted would preclude submission of a consolidated plan after the first 60 days of the legislative session, even if to replace a plan that was rejected. We recommend that this 60 day requirement be eliminated as it could have the undesirable effect of requiring the President to wait until the beginning of a new legislative session to submit a consolidation plan which only becomes ready for transmittal on the 61st day of a legislative session.

4. Other Related Provisions

a. As drafted, proposed 5 U.S.C. § 1003(b)(2) and 5 U.S.C. § 1004(a) impose similar but not entirely congruent limitations. To avoid possible inconsistent interpretations, 5 U.S.C. § 1003(b)(2) should end with the word "plan" on line 13 of page 44. Proposed 5 U.S.C. § 1004(a) should be changed to include a new subsection (5) by inserting, between the word "consolidated" and the period on line 12 of page 47, the phrase: ", and (5) selecting terms and conditions for the administration of the plan which would not insure that the intended benefits are delivered to the intended beneficiaries in a manner consistent with congressional purposes."

b. As drafted, proposed 5 U.S.C. § 1006(c) requires addition of a procedural step in administrative or court litigation to reconcile the parties with those in the approved plan. There is no demonstrated need for such an additional step. Authority now exists in administrative law and regulations, and in the statutes and rules governing judicial litigation, to alter the alignment and names of parties as required. Steps should not be added which are unnecessary and which overburden an already too complex system. This provision, proposed 5 U.S.C. § 1006(c), should be deleted from the bill.

c. It appears that the language in 5 U.S.C. § 1006(d) relating to both authorization and appropriation intent could cause problems with respect to determination of actual program funding levels. This section should be redrafted for clarity.

III. TITLE II OF S.878

A. Introduction

The Section is in general support of the goals and purposes of Title II noting that the Office of Management and Budget has already issued guidance in these areas covered. OMB recently issued a revised Attachment P to its Circular A-102 and plans to issue a similar directive for Circular A-110. Title II and Attachment P are substantially similar in that they both direct Federal agencies to depend on audits performed by state and local governments which received Federal assistance.

B. Substantive Comments

1. Section 204(a)

Section 204 of S. 878 requires that at least once every two years there be conducted a financial and compliance audit of entities which receive federal assistance. The definition of "financial and compliance audit" under Sec. 202(1) limits the "compliance" portion of the audit only to compliance with general regulations affecting the grantee's financial operation, conditions, and reports. Thus, such an audit would not determine compliance with the numerous specific assistance requirements in the regulations of the individual federal agencies involved. The Bill should give some consideration to auditing how individual items are spent so as to avoid problems such as misappropriation, waste, and fraud.

2. Section 204(c)(3)

The independent audits authorized by Secs. 204(a) and (b), upon which the federal agencies may rely, do not cover compliance with statutes and regulations regarding each individual program. Thus, the Federal agencies are left with the responsibility for conducting such audits. See Sec. 204(c)(3). We recommend that it would be in keeping with the spirit of Title II of the Bill to expand Sec. 204(c)(3) to clarify that where assistance funds have been consolidated pursuant to Title I of the Bill, or integrated pursuant to Title III of the Bill, the lead agency shall be responsible for conducting audits to determine compliance with Federal statutes and regulations. Furthermore, we recommend that even whether programs have not been integrated or consolidated, OMB be authorized to designate a lead agency to be primarily responsible for such audits.

3. Section 204(e)

Sec. 204(e) of the Bill provides that OMB shall "prescribe appropriate means for the reimbursement of independent auditors for actual expenses incurred for such parts of audits as are performed on behalf of the Federal Government . . . ." (page 60, lines 19-23, emphasis added). We recommend that reimbursement should be made to the assistance recipient, rather than directly to the auditor, because the Federal government would not necessarily have a contractual arrangement with the independent auditor prior to the conduct of the audit. If, however, the direct reimbursement provision is retained, we recommend that the underlined portion be changed to insert the more general term "services," so as to make it clear that the independent auditor may be paid its expenses plus a reasonable fee, or any other reasonable arrangement such as a price fixed before the audit.

IV. TITLE III OF S.878

We support passage of Title III, as a separate measure. We have some changes which we suggest be made. These are outlined below.

Title III of S.878, identified as the Integrated Grant Development Act of 1980, follows closely the language of the Joint Funding Simplification Act of 1974 (Act), the authority for which expired on February 4, 1980. The purpose of the Act was to permit state and local governments as well as non-profit recipients of Federal assistance funds to simplify application and audit procedures. It was contemplated that the Act would "facilitate the 'packaging' of categorical grants so that eligible state and local governments, as well as private, non-profit organizations may use Federal assistance more efficiently and effectively in multiple-purpose projects that transcend categorical program boundaries".

The original Act was largely permissive in nature. Federal officials were given broad discretion in the use of the joint funding technique.

By Executive Order 11893 (Dec. 31, 1975), the President delegated to OMB the authority to issue the joint funding regulations. OMB issued Circular A-111, "Jointly Funded Assistance to State and Local Governments and Non-Profits Organization" (July 6, 1976), as a result.

The Circular sought to lessen the discretion of the Federal agencies allowed by the Act. For example, the agencies were required to identify and publish in the Catalog of Federal Domestic Assistance those programs eligible for joint funding. OMB further required the Federal agencies to insure that information regarding eligible programs was made available to agency personnel, other agencies, and the federal Regional Councils.

During consideration of an earlier bill to extend the original Act, OMB conceded that its management and oversight of the program had been ineffective. Nevertheless, OMB argued that improvement could be made by administrative actions. Senate Report 96-530, 96th Cong., 2d Sess. (1979)

OMB submitted a work plan to the Senate Committee on Governmental Affairs that included a plan to revise its Circular No. A-111. The Senate Report suggested that such revision would, *inter alia*, encourage the agencies themselves to identify programs suitable for joint funding. However, we note that Section 7.a.(2) of the present Circular, *requires* such an identification.

As noted, Title III of the Bill closely parallels the Joint Funding Simplification Act. The purposes and methodology of the program would remain very much the same. There are some changes in the Bill however.

Title III adds, in section 303 thereof, a list of six definitions identical to those found in OMB Circular A-111. However, the drafters of the Title III of S.878 deleted definitions for Federal agencies and non-profit organizations. It is urged that these definitions be included. "Executive agency" has been defined in Sec. 3(3) of Pub. Law 95-224, and we recommend a conforming definition be used here. We recommend that a definition of non-profit organizations should also be included, perhaps along the lines of that found in section 6(b) of OMB Circular A-110, "Uniform Administrative Standards for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations." Further, as mentioned in our comments on Title I, we suggest that the term "Federal assistance program" be defined so as to be consistent with Public Law 95-224.

Section 303(3) of Title III of the Bill defines the term "project" in a broad fashion. Yet, the definition does limit the effective scope of Title III by requiring components of programs eligible for joint funding to contribute "materially to the accomplishment of a single purpose or closely related purposes." We note that Section 304(b)(1) directs agency heads, in searching for programs that may be eligible for joint funding, to "identify related programs likely to be particularly suitable or appropriate for providing joint support." We recommend the latter definition because it is more in keeping with the intent of Title III and suggest Section 303(3) be reworded accordingly.

Sec. 304(b) of Title III of the Bill states that the head of each agency "shall" perform the functions enumerated in Sec. 304(b). Under the former Act, the word "may" was employed. Similarly, in sections 306(a), 307(a), and 309(3) of the Bill the word "shall" replace "may." The impact of such changes will, of course, strengthen the mandate of the program, and we support this change.

Section 307(a) directs the head of each Federal agency to adopt and adhere to certain uniform procedures. We suggest that it would be more appropriate, and in keeping with the overall intent of Title III, to provide that the President be authorized to designate a lead agency which would be responsible for developing these uniform procedures. This will avoid the possibility of the agencies developing inconsistent "uniform" procedures.

We are also confused about the intent of Section 307(a). It can be interpreted as applying only to one specific project at a time, or it can be construed as applying to all projects that may be subject to joint funding. We suggest this be clarified.

The most important change that occurs in the Bill is found in Sec. 309 thereof, Funding Arrangement Procedures. As with the former program, a pool of funds from the various assistance programs is to be established. The difference between the old Act and the Bill occurs when the jointly funded program does not exhaust all the funds in the pool. In Title III of the Bill, the funds would revert to the contributing agencies on a proportional basis. Such an arrangement would appear to encourage greater participation in the program by the agencies. However, the Bill does not state, as did the original Act, that annual funds not utilized by the end of the fiscal year would expire. We suggest that the clause "subject to fiscal year limitations" be included in the Section and that the Bill be amended to accomplish this.

Another change occurs in Sec. 309(b) of the Bill. Sec. 4257(b) of the original Act mandated a procedure for determining whether amounts in the accounts were in excess of those required. Title III provides the agencies the discretion for providing such a procedure. This is, again, a move which we support to provide greater flexibility and, therefore, greater participation in the program.

Finally, Title III mandates in 309(e) that "a single non-Federal share be established for any project financed through a management fund according to the Federal Share ratios applicable to the federal assistance programs . . ." Formerly, [in Sec. 4257(e) of the original Act], Federal agencies were merely authorized to establish such a share. Programs requiring differing matching percentages could require an unnecessary administrative burden. We recommend that, in keeping with the Bill's philosophy of greater flexibility, establishment of the non-Federal Share be returned to the discretion of the agency and recommend amendment to accomplish this.

V. TITLE IV OF S. 878

A. Introduction

Title IV, entitled "Administration of Generally Applicable Federal Assistance Requirements" would amend the Intergovernmental Cooperation Act of 1968 ("ICA") (42 U.S.C. §§ 4201 et seq.) by adding at the end thereof a new Title VII (with the same title as Title IV of S.878), consisting of seven new sections: 701-707. These new, proposed sections would include a statement of purpose (sec. 701), definitions (sec. 702), designated agencies (sec. 703), authority to issue new "national policy assistance standards" (sec. 704), state and local certification, and implementation and enforcement roles of federal agencies (secs. 705 and 706), and general oversight authority (sec. 707).

The Section believes that for general policy such as cross-cutting conditions the development of policy should be centralized, generally within a lead agency, in a realistic, workable manner that will facilitate achieving both individual program goals and other national policy objectives without undue complexity and with appropriate input from other agencies and the public. However, responsibility for enforcement and specific program requirements and regulations should be placed in the agency administering the program seeking uniformity within that agency.

Our reason for not giving lead agencies enforcement powers is our concern that such agencies, separated, as they would be by this legislation from those who are familiar with the programs, are likely to become special interest representatives carrying out such requirements too zealously and for their own sake, to the detriment of other, more fundamental and important requirements of the federal assistance programs involved. This has been the case with many regulatory agencies and has been an important reason behind deregulation. While it can be argued that the present dispersal of responsibility for such cross-cutting requirements can lead to conflicting standards for enforcement, the enforcing agencies are also responsible for seeing that their program requirements are carried out. Hence, the differing standards may only be a reflection of the different situations in which they are applied. They must thus weigh and balance the cross-cutting requirements against other requirements to come up with some sort of sensible, balanced approach. Appointing a separate agency to carry out the responsibilities for enforcing cross-cutting requirements creates the danger that, as a body, these lead agencies would lose sight of the primary goals of the affected programs.

We are also concerned that if Title IV or some similar measure is enacted, conflicts and disputes may arise which will not be easy to resolve.

Examples of possible conflicts would be when two different assistance administering agencies disagree with the lead or designated guidance agency concerning implementation of a cross-cutting requirement; where one grantee is confronted with two cross-cutting requirements that conflict as in the case, say, of merit protection for public employees and affirmative action requirements; where a grantee finds a cross-cutting requirement is being applied with such zeal that either the assistance program itself is being compromised or that it is too much of a burden to comply; or where third parties have a quarrel with the implementation of cross-cutting requirements.

We submit that some dispute resolution mechanism or process is needed in, but absent from, Title IV. Such a mechanism or process could be one that establishes a formal tribunal, or, instead, a relatively informal process which gives a designated guidance agency head the authority to waive a cross-cutting requirement when certain conditions (e.g. the public interest or urgently needed program implementation) are met.

With respect to other details of Title IV, we recommend that new proposed sec. 702(4) of the ICA at pp. 75-76, lines 21-25 and 1-3 of the Bill, respectively, should be amended to require that issuance of national policy assistance standards conform to the notice and comment rulemaking procedures of the Administrative Procedure Act.

With respect to certification, at this time we can only support use of this procedure in the area of procurement because of the extensive efforts to extend uniform standards, through the Model Procurement Code and similar efforts, to state and local levels. Yet, even in that area which is a relatively non-controversial and low-profile subject in comparison to some of the environmental and civil rights related cross-cutting requirements, certification under the current version of OMP Circular No. A-102, Attachment O thereto has been challenged as administratively unworkable. Attempts are under way to resolve many of the problems in the procurement certification process. (See, for example, the Uniform Procurement System recommendations dealing with the topic of contracts under grants).

We recommend that the proposed certification process be the subject of hearings so that it may be examined thoroughly.

VI. TITLE V OF S.878

Title V of the Bill is appropriately entitled, "Miscellaneous." Because of the varied nature of the Title, our comments are directed only at those provisions with which we have difficulty.

Proposed Sec. 205(1) provides for "advance" notice without explaining, for example, whether one day's notice by telephone would be sufficient. The Report should clarify what we meant by use of that term.

Proposed Sec. 205(1)(B) of the Intergovernmental Cooperation Act (ICA) (at pp. 85-86 of the Bill) would establish new procedural protections for any decision to "refuse to renew federal financial assistance . . . ." This language is overbroad. There are discretionary grants awarded for one or more project years which carry no obligation whatsoever to fund in a following year. This provision would produce needless additional administrative burdens and potentially provide a disincentive to extend discretionary assistance to previously unfunded state and local governments who would use the money and do the job as well. There are circumstances in which there is some express or implied obligation to fund in a following year, and there should be some procedural safeguards for grantees in those cases (see Southern Mutual Help Association v. Califano, 574 F.2d 518 (D.C. Cir. 1977)). But proposed Sec. 205(1)(P) of the ICA (at pp. 85-86 fo the Bill) as currently drafted does not restrict coverage to those legitimate cases.

Both the Office of Management and Budget in its analysis of pre-award and post-award disputes and the Administrative Conference of the United States (ACUS) have devoted considerable attention to this area. We are in support of extending due process protection where appropriate, but we recommend that you seek the views of OMB and ACUS on these matters.

Proposed Sec. 205(3) of the ICA (at p. 86 of the Bill) would give states or local governments an "opportunity to demonstrate why the agency action should not be taken." However, the range of circumstances in proposed Sec. 205(1) - to which proposed Sec. 205(3) refers - involves substantially differing rights. For example, terminating a grant involves taking away a property right of the grantee, while refusing to award a new discretionary grant (i.e., subsequent Fiscal Year) generally involves no rights at all. Thus, the nature of proposed Sec. 205(3) of the ICA "opportunity" should differ substantially for different types of determinations.

The Section in its comments on OMB's Study of Federal Assistance Management under the Federal Grant and Cooperative Agreement Act of 1977, Pub.L.No. 95-224, dated December 5, 1979, devoted considerable attention to the distinctions which can be drawn among various agency actions. The commentary is appended to this document for your review.

Proposed Section 205(3) as drafted is general in the extreme and provides no useful guidance. In fact, most if not all, assistance agencies are already providing some minimal "opportunity" which would comply with the provision; and many are offering structured hearings and other "opportunities" that go well beyond the provision. The provision thus largely confirms existing, and often inadequate, agency practice; and it is behind what already is occurring in progressive agencies.

The last sentence of the proposed Sec. 205(3) of the ICA is unclear. In one sense, all agency withdrawals of refusals are "required by law," since they are determinations of ineligibility, inadequacy of performance, unallowable costs, etc., pursuant to law. On the other hand, merely because a disallowance determination is "required by law" would not defeat the Constitutional requirement for advance notice and opportunity for review when dealing with certain vested property rights. See Goldberg v. Kelly, 397 U.S. 254 (1970). This provision is at best ambiguous, and at worst, raises questions as to its Constitutionality.

Proposed Sec. 206(a) of the ICA (at pp. 86-87 of the Bill) authorizes the head of agencies to waive certain regulatory requirements under prescribed circumstances. This would merely authorize agencies to do something they already can do, and many are doing. See, e.g., the "deviation" provisions of the Environmental Protection Agency grant regulations, 40 CFR 30.1000 et seq. Inclusion of this provision in the Bill could be counter-productive since, if it is not enacted, it might give an opponent of a particular waiver an argument favoring the "illegality" of the waiver process. The provision adds nothing to existing authority, and it could backfire against those who favor its adoption as an administrative practice. If what is sought is greater use by agencies of this common-sense approach, then the Committee staff should encourage OMB to issue a policy statement encouraging agencies to implement the approach administratively.

Furthermore, as drafted, the provision is internally inconsistent. It would authorize waiver of an agency's regulation to the extent, according to lines 13 and 14, at p. 87 of title V, that would not diminsh or detract from any requirements of a regulation.

The last sentence of proposed Sec. 206(b) of the ICA (at p. 87 of Title V of the Bill) is unclear. We do not know what new "right" to use would have been created. In any event, there is always the right under the Administrative Procedure Act to sue alleging an arbitrary action under this Section.

AMERICAN BAR ASSOCIATION

SECTION OF PUBLIC
CONTRACT LAW

WRITER'S ADDRESS AND TELEPHONE

2300 Two Girard Plaza
Philadelphia, Pennsylvania 19102
215/569-4530

1979-80

CHAIRMAN
Theodore M. Kostos
2300 Two Girard Plaza
Philadelphia, PA 19102
215/569-4530

CHAIRMAN-ELECT
O. S. Hiestand
1800 M Street, NW
Washington, DC 20036
202/872-5160

SECRETARY
Thomas E. Abernathy IV
Harris Tower
2600 Peachtree Center
Atlanta, GA 30303
404/521-3800

SECTION DELEGATE
Marshall J. Doke, Jr.
4200 Republic National Bank
Tower
Dallas, TX 75201
214/742-1021

IMMEDIATE AND PREVIOUS PAST CHAIRMEN
George M. Coburn
1700 K Street, NW
Washington, DC 20006

Allan J. Joseph
600 Montgomery Street
San Francisco, CA 94111

COUNCIL MEMBERS
Ruth C. Burg
200 Stovall Street
Alexandria, VA 22332

Roger N. Boyd
1100 Connecticut Avenue, NW
Washington, DC 20036

David L. Hirsch III
One Golden Shore
Long Beach, CA 90802

S. Neil Hosenball
400 Maryland Avenue, SW
Washington, DC 20546

James J. Myers
60 State Street
Boston, MA 02109

Austin G. Roe
200 Stovall Street
Alexandria, VA 22332

Thomas B. Treacy
115 Broadway, Room 1915
New York, NY 10006

Carl L. Vacketta
800 Massachusetts Avenue, NW
Suite 600
Washington, DC 20036

Robert D. Wallick
1250 Connecticut Avenue, NW
Washington, DC 20036

EDITOR, PUBLIC CONTRACT LAW JOURNAL
Paul Shnitzer
600 New Hampshire Avenue, NW
Washington, DC 20037

EDITOR, PUBLIC CONTRACT NEWSLETTER
Martin J. Harty
9926 Rand Drive
Burke, VA 22015

YOUNG LAWYERS DIVISION REPRESENTATIVE
Carolyn B. Lamm
2101 Connecticut Avenue, NW
Washington, DC 20008

LAW STUDENT DIVISION REPRESENTATIVE
Linda R. Caruso
8502 Irvington Avenue
Bethesda, MD 20034

BOARD OF GOVERNORS LIAISON
Albert E. Jenner, Jr.
Suite 4400, One IBM Plaza
Chicago, IL 60611

SECTION ADMINISTRATOR
Marilyn Neforas
American Bar Association
1155 East 60th Street
Chicago, IL 60637
312/947-3861

December 5, 1979

Richard R. Hite
Deputy Associate Director for
Intergovernmental Affairs
Office of Management and Budget
Room 5235, NEOB
Washington, D.C. 20503

Re: Comments - Study Of Federal Assistance Management Pursuant To The Federal Grant And Cooperative Agreement Act Of 1977 (Pub. L. 95-224)

Dear Mr. Hite:

On behalf of the Section of Public Contract Law of the American Bar Association, we submit for your consideration the recommendations and commentary hereinafter set forth with respect to the Study of Federal Assistance Management under the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224). The views expressed herein are being presented only on behalf of the Section of Public Contract Law and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and should not be construed as respresenting the position of the American Bar Association.

Recommendation No. 1

Model formats for statutes authorizing Federal Assistance should be developed and applied cooperatively by OMB in the legislative development and clearance processes and by the legislative counsel's offices in the House and Senate.

Commentary

Statutes which authorize federal assistance programs usually do not use any common set of definitions of terms and structure, have not necessarily included the specific directives needed to implement them, and often have not afforded a clear basis for comparison between programs. Even the most elemental terms such as "grant", "grant-in-aid", "grant agreement", "subsidy", and "cooperative agreement" are used in different ways in different statutes. Variations in assistance programs frequently occur because of a lack of uniformity in drafting standards, rather than a discernible difference in Congressional intent.

Executive agencies should not have to address highly political issues, such as who is eligible to receive funds from a certain program. Congress should be explicit on eligibility. In the absence of adequate definitions of eligiblity in a statute, there should be a clear understanding as to the range of administrative discretion to include or exclude categories of recipients. The purposes for which funds may be used should also be explicitly stated by the Congress. Executive agencies should not be required to decide which kinds of activities might be relevant to a vaguely stated preamble outlining grand national objectives. Where it is intended to give recipients broad discretion to select activities (as in general revenues sharing, special revenue sharing and block grants), such intent should be stated with clarity and the presence or absence of Federal controls or restrictions on the use of those funds should be explicit.

Recommendation No. 2

There should be a separate office established in OMB responsible for Federal assistance policies.

Commentary

Currently there is fragmentation of authority for different types of guidance between different offices in OMB and other agencies. There is no point for coordination and reconciliation of issues and the issuance of definitive guidance, such as is present in the procurement field.

2.a.

Initially, this office should not be merged with OFPP.

Commentary

Both the supporters and detractors of OFPP seem to feel that it is the wrong place to start a Federal Assistance guidance office. Cynically, some assume that OFPP would be given an added mission (about which it is not enthusiastic) without adequate staff and other resources and the job simply would not be done. Others feel that it would result in an automatic introduction of procurement principles and techniques into assistance without adequate study or any attempt to recruit staff who understand how assistance is different from procurement. Still others feel that OFPP has all it can do to fulfill its present mandate effectively. It is believed, however, that some kind of coordination between procurement and assistance policies would be needed.

2.b

This office should have the authority to offer guidance and issue regulations concerning Federal Assistance policies and should be the focal point within the Executive Branch for the issuance of guidance and regulations having government-wide applicability.

Commentary

Currently most OMB Circulars and Bulletins do not have the force of regulations which govern agency operations. They often must be separately implemented at departmental, agency and component levels before they are effective. Such implementation often takes years and is subject to variation and even circumvention. The grantee community finds that it is faced with a different set of requirements from each agency even in areas with supposedly common guidance.

2.c

This office should establish a uniform codification system for guidance in Federal assistance.

Commentary

A uniform codification system would bring together all of the requirements so that they can be accessible to grantees and compared and analyzed for policy purposes. This would not interfere with those agencies which now have substantive jurisdiction over cross-cutting requirements.

2.d

This office should require assistance agencies to establish and publish standards for eligiblity, notice, application procedures and awards of Federal assistance. Such standards should encourage competition in all discretionary assistance programs and require publication of selection criteria. Publication should not be limited to the Federal Register.

Commentary

These standards are intended to establish the basic principles of notice, fairness and free and open competition whenever possible in Federal assistance programs.

2.e

This office shall establish government-wide standards and procedures for limitation, suspension, termination, debarment or other sanctions affecting applicants and recipients.

Commentary

Such government-wide standards will provide executive agencies with the tools to enforce accountability and assure basic procedural fairness and equity to recipients and protect them from arbitrary action.

2.f

This office should foster the development of standards for the selection, training and professional development of personnel in the assistance field.

Commentary

The policies, procedures and legal relationships in the assistance field are sufficiently different from those in the procurement field to justify a commitment to developing a high degree of competence and professionalism.

Recommendation No. 3

The overall regulatory and audit burden on all recipients should be minimized to the maximum extent practicable. Recipients should be entitled to rely upon a single set of accountability standards, and reviewed by a single audit activity for allowability regardless of the agency origin of the funding. Recipients should be entitled to prompt audit review and to rely upon the acceptability of their account's treatment of costs until formally notified of audit disallowance

Commentary

The addition of a new office is intended to simplify assistance policies and the requirements imposed on recipients, not to add another level of red tape. The specific institutions and types of institutions which create problems should be regulated without imposing burdens on the entire recipient community; however, proper concern for accountability must nevertheless be maintained.

Recommendation No. 4

Both regulations and guidance should be adopted and published only after public notice and an effective opportunity for public participation. Participation should be actively and directly solicited from those affected before a firm position is established.

Commentary

Significant progress has been made toward public participation by OMB and other Federal agencies in the rulemaking process. However, many agencies utilize the Advisory Committee Act to avoid any consultation before proposed rules are published. When proposed rules are published they represent an "agreed" agency position which the agency is prepared to defend against all comments rather than to attempt to respond to public comments. The HEW procedure of publishing a general "Intent to Propose a Rule" is useful. Specific invitations to groups with known concerns would not violate the Advisory Committee Act as long as the public and other persons not specifically invited could attend and have full opportunity to participate.

Recommendation No. 5

[Withdrawn]

Recommendation 6(a)

Administrative Review and Disputes Resolution --
Award of Discretionary Grants

We believe there is a distinction between the initial selection and funding of a discretionary grant and any subsequent decision not to provide follow on funding under a previously awarded discretionary grant. Applicants in the first situation who are denied discretionary grants should have at least a right of administrative review; for example, a right to a review by an official at a level higher than the official making the initial decision, or an investigation by the General Counsel's office or an Inspector General's office, without necessarily providing a hearing. The following are circumstances which call for such a review:

-- Where the applicant questions whether qualifying requirements and selection criteria announced by the agency were followed in making the selection.

-- Where the applicant believes that any element of the selection process violates a constitutionally protected right of the applicant, or violates applicable law or regulation.

The second situation, the decision to reduce or eliminate further funding under a previously awarded discretionary grant, should give rise to an opportunity for a formal hearing if the applicant believes it had a reasonable expectation of further funding upon which expection it hired staff or incurred other substantial continuing commitments, or if the grant is to be continued by others. Such a hearing does not imply a hearing in accordance with the Administrative Procedure Act, but should provide the disappointed applicant the right to be personally heard before an official independent from the official making the initial decisions.

In either situation, any aggrieved applicant should be informed of, and allowed to discuss with the agency, the deficiencies in their application or any other factors, which led to nonselection. Where the applicant's submission was not specifically found deficient, but rather another application was simply deemed superior, the nonselected applicant should be given an explanation of why the funded application was found superior. This opportunity could take the form of a group or individual debriefing session, or a right to access to some specified agency decision maker, as appropriate. Any such opportunity must be afforded promptly, generally within ten days after the agency's decision.

If it is determined that the agency erred in its selection and funding processes, and that the error prevented an applicant from receiving an award, agencies should consider one or more of the following remedial mechanisms:

-- A preference for the applicant in subsequent competition for similar grants for which the applicant is qualified.

-- An award of the reasonable costs of grant application preparation.

-- An action to assure that steps are taken to prevent such errors in future assistance competition and awards.

-- In cases involving refunding, authority to withhold the new award until consideration of the complaint.

Agencies should establish a simple process for prospective applicants to present their concerns to the agency about the validity and clarity of the qualifying requirements and selection criteria established for the prospective award of discretionary assistance. The process should have a capability for rapid response and announcement to the competing community of any changes.

Commentary

Most Federal agencies offer no opportunity for administrative review, formal or informal, for applicants for discretionary grants who feel they have suffered from some agency error. The two main reasons for this seem to be:

1. Courts have been reluctant to find that there is any "right" to an award of discretionary grant; rather, courts are inclined to view the applicant as having merely a unilateral expectation. *Nat'l Consumer Info. Center v. Gallegos*, 549 F.2d 822 (D.C. Cir. 1977). There are limits to this hands-off policy, for example, where the aggrieved applicant alleges violations of a constitutional right (*Apter v. Richardson*, 510 F.2d 351 (7th Cir. 1975)), and in refunding cases where the applicant can demonstrate some reasonable expectation of further funding (*Southern Mutual Help Assoc. v. Califano*, 514 F.2d 518 (D.C. Cir. 1977)).

2. Since there may be many applicants for each potential award, the agency resource requirements needed to afford a forum for disgruntled applicants could be formidable. Given the potential cost, and the fact that agencies (and, indeed, grantees) tend to view discretionary funding as largess, there is little incentive for agencies to develop administrative review mechanisms.

Nevertheless, one can identify circumstances in which equitable concerns call for some quick, fair and inexpensive means of reviewing an aggrieved applicant's complaints. This recommendation provides for minimum administrative review mechanisms which should be made available by Federal agencies as part of their processes of selecting recipients of discretionary assistance. As experience under particular programs grows, it may prove appropriate to develop more formal review processes for particular situations.

Recommendation 6(b)

Entitlement Grants

> Federal agencies should establish fair and impartial review procedures for applicants to entitlement grants who are denied funding. The aggrieved applicant should have a right to an informal review within the agency and, if dissatisfied, to a formal notice and a hearing under the Administrative Procedure Act to challenge the agency's initial decision. Within several existing programs, right to a hearing under the APA has been established by statute with further provision for direct appeal from the final administrative decision to the United States Court of Appeals for the circuit in which the grantee is located. Those statutes provide that the administrative determination and findings of fact must be supported by substantial evidence. We believe that those are fair and proper remedies which should be assured all applicants for entitlement grants.

Commentary

The essential difference between a discretionary and an entitlement grant is that there is a legal right to an entitlement grant if statutory and regulatory conditions are met. Under those circumstances, the award of an entitlement grant is not an action which is committed to agency discretion.

However, the right to an entitlement grant must be measured against the actual requirements of the statute establishing the grant program. The granting agency may refuse to grant the funds when the grantee fails to comply with the requirements of the Act establishing the entitlement program[1] or when the grantee fails to comply with some other statute or regulation which establishes requirements for use of grant funds.[2]

---

[1] See Arizona State Department of Public Welfare v. Department of Health, Education and Welfare, 449 F.2d 456, when the court upheld HEW's refusal to provide funding to Arizona under four entitlement grant programs based upon findings that the State of Arizona failed to conform to requirements imposed by Federal law and regulations. The four programs were all established under the Social Security Act and included Old-Age Assistance, Aid to Families with Dependent Children, Aid to the Blind, and Aid to the Permanently and Totally Disabled. 449 F.2d at 460. See also City of Macon v. Marshall, 439 F. Supp. 1209 (M.D. Ga. 1977), where the court upheld the Department of Labor's refusal to certify the City of Macon's compliance with provisions of the Urban Mass Transportation Act, 49 U.S.C. §1601, et seq., (1970), designed to protect employee's rights. Compliance with these provisions was a condition precedent to receiving Mass Transit entitlement grants.

Even where an entitlement grant is approved by the Federal agency, the courts have enjoined expenditures of funds where grantees failed to comply with the grant statute or where the agency acted improperly in approving the grant.[3] Courts have also required entitlement grantees to recover and properly allocate funds which had been improperly expended by the grantee.[4]

The right to an entitlement grant also does not override limitations on expenditures of appropriated funds, and the entitlement to unobligated grant funds expires when the period Congress allowed for obligation of the funds expires.[5]

---

[2] See Board of Public Instruction of Taylor County, Florida v. Finch, 414 F.2d 1068 (5th Cir. 1969), where the court upheld HEW's termination of entitlement grants for education programs based on findings that the Taylor County Board had failed to comply with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964.

[3] See Ely v. Velde, 451 F.2d 1130 (4th Cir. 1971), where the Fourth Circuit Court of Appeals found that the Law Enforcement Assistance Administration had failed to conform to the requirements of the National Environmental Policy Act (NEPA) in approving an entitlement grant of funds to the State of Virginia under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3701, et seq., (1976). The Court enjoined LEAA from approving expenditures for a prison facility until complying with NEPA. See also discussion of Members of San Antonio Conservation Society v. Texas Highway Department. This case involved Federal-Aid Highway Act grants which are awarded on an entitlement basis.

[4] See National Association of Neighborhood Health Centers v. Mathews, 551 F.2d 321 (D.C. Cir. 1976) where HEW was ordered to recover entitlement grant funds expended to States under the Hill-Burton Act, 42 U.S.C. §291, without giving special consideration to the needs of poverty areas.

Statutes establishing some entitlement programs often require grantor agencies to provide an administrative hearing before finally disapproving a grant application or a plan submitted as a pre-condition to receipt of financial assistance, and these statutes expressly provide for judicial review of the grantor agency's final decision.

The Omnibus Crime Control and Safe Streets Act provides, for example, that disappointed applicants for discretionary grants must be notified of the Law Enforcement Assistance Administration's reasons for rejecting an application and must be given a hearing if the disappointed grantee so requests. The statute also provides that the agency's final decision can be appealed to the United States Court of Appeals for the circuit in which the applicant is located. See 42 U.S.C. §3757. Similar provisions include: 20 U.S.C §241(3), (f) and (k), which provide for administrative appeals from entitlement grant denials under the Elementary and Secondary Education Act; 42 U.S.C. §1360, which provides for administrative appeals from entitlement grant denials under the Social Security Act; and 29 U.S.C. §818, which provides for administrative appeals from entitlement grant denials under the Comprehensive Employment Training Act.

This recommendation is directed to those entitlement grant programs that do not provide for administrative appeals from grant denials.[6] The reasons for providing an administrative hearing are well stated in the working papers prepared by OMB in its study of Federal assistance management pursuant to the Federal Grant and Cooperative Agreement Act of 1977. In the paper on Administrative Resolution of Disputes at the Grantor/Grantee Level, the study makes the following statement:

---

[5] See National Association of Regional Councils v. Costle, 564 F.2d 583 (D.C. 1977), where the court found that an entitlement grantee's right to assistance did not override provisions of appropriations act which made budget authority for certain entitlement grants avaiable for a specified period of time. The specified period expired before entitlement grants were awarded the the Environmental Protection Agency under Section 208(f)(3) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1288(f)(3), (Supp. II, 1972). The lawsuit was filed by the National Association after the specified period and the court found that it was without authority to extend the period in which funds could be awarded. In Jacksonville Post Authority v. Adams, 556 F.2d 52 (D.C. Cir. 1977), the Court of Appeals found that since an entitlement grantee applied for and was denied a grant during the specified time allowed for obligation of grant funds and since the lawsuit was filed before the specified period expired, the court could order an agency to make an award after the specified period expired.

> Administrative remedies with a sliding scale of formality and procedural protection depending on the complexity of the problem can have several advantages. An independent administrative body can often resolve the complaints simply because the complaining party has had a "day in court"; an opportunity to protest to an unbiased observer and have the grantee's grievance aired. From the perspective of judicial review there is, however, another advantage. As noted in Overton Park, often grants decisions are made on the sparsest of records with little or no formal findings. This complicates judicial review, regardless of the standard of such reviews. An administrative procedure even if relatively informal could help provide such administrative record and formal findings if appropriate.[7]

---

[6] If there is no statute establishing such a procedure, or if the administrative remedy will not protect the rights of the entitlement grantee, a party seeking judicial review at the Federal District Court level of an entitlement grant denial can establish jurisdiction under 28 U.S.C. §1331 or under the mandamus statute. See for example City of Los Angeles v. Adams, 556 F.2d 40 (D.C. Cir. 1977) where the Court of Appeals for the District of Columbia recognized the right of the City of Los Angeles to receive an entitlement grant under the Airport and Airway Development Act. 49 U.S.C. §1701 (1976).

[7] Managing Federal Assistance in the 1980's, Working Papers, Task Group E, Administrative Resolution of Disputes at the Grantor/Grantee Level, Robert D. Wallick et al, Page E-5-14.

Recommendation No. 7

Resolution of Grantor/Grantee Disputes Arising out of the Performance of A Grant

The Congress and the grantor agency should provide a fair process for resolving post-award controversies. At a minimum, this process should provide for:

1. An informal review conducted by an agency official who is not directly involved with the dispute, and who is at a grade or rank at least comparable to the agency official responsible for the decision being disputed.

2. An appeal to a board or administrative law judge who has been delegated final authority to hear and to decide the dispute.

3. A right to judicial review. We recommend further study as to the scope of review which is appropriate and the possiblity of a right of direct access to the courts for an aggrieved grantee.

   (a) Where an administrative appeal process is provided, at least the following should be provided:

      (i) Reasonable discovery;

      (ii) Submittal of evidence including sworn testimony on the record to the reviewing official;

      (iii) An opportunity to rebut evidence submitted by other parties;

      (iv) Argument and counter-argument on pertinent issues;

      (v) Representation by counsel;

      (vi) The reviewing official's findings, and grounds for decision should be furnished in writing.

   (c) The board or administrative law judge should allow a third party to present the case on appeal or to appear with a party in the case, after consultation with the parties, when the board or administrative law judge determines that the third party is a real party in interest (for example, where an audit disallowance would result in a contractor of the assisted agency losing the amount in dispute, or where a State under a delegated program played an important role in the decision on which the appeal is based). The board or administrative law judge should also allow other parties to participate, in the manner and by the deadlines established by the board or administrative law judge, where the board or the administrative law judge decides that the intervenor has a clearly identifiable and substantial interest in the outcome of the dispute, that participation would sharpen issues or otherwise be helpful in resolution of the dispute, and that participation would not result in substantial delay.

Commentary

In contrast to the pre-award climate, many Federal agencies provide some form of administrative review for post-award disputes. For example, the Department of Health, Education and Welfare (HEW) has established a general departmental Grant Appeals Board, which has jurisdiction to hear and to determine a broad range of post-award disputes arising from designated grant programs. Similarly, the Environmental Protection Agency has established a Board of Assistance Appeals with broad-based jurisdiction. The Departments of Energy and Commerce currently are in the process of establishing similar boards.

In addition, several agencies -- including HEW, the Department of Labor, the Department of Housing and Urban Development, the Law Enforcement Assistance Administration, the Community Services Administration, and ACTION -- have established hearing and review procedures for particular grant programs, pursuant to statutory mandates. These procedures allow for a review or hearing before an administrative law judge or specially designated agency official.

These existing initiatives should be continued and expanded. Fundamental notions of due process and grant management warrant the existence of fair review procedures and judicial review and the encouragement of their use.

Recommendation 8

Procedure For Resolving Bidder And Contractor Grievances Arising Under Contracts Financed By Federal Grant Programs

As contracting with federal grants expands, so do the grievances of the bidders who seek those contracts and the grievances of the performing contractors.

The bidding process: federal grantor agencies should establish administrative procedures for resolving complaints made by an aggrieved bidder or prospective bidder. This is needed to assure proper and best use of the federal funds. The first step in the process should be a review by the grantee of any complaints. Then the process should provide for a fair and impartial consideration by the grantor of a possible failure to comply with the provisions of applicable statutes and regulations.

The complainant should have an opportunity to submit to the grantor information and arguments in support of its complainant. The grantee and affected bidders should have a fair opportunity to respond.

If the Agency determines the complaint is unfounded or is insubstantial, it should notify the complainant of its determination and should state fully in writing the reasons therefor.

If the agency determines that the complaint is substantial and supported by the information provided either by the complainant or by its own investigation, it should notify the grantee and the complainant of its determination and state in writing ~~the reasons therefor.~~ The grantee should be given an opportunity to take corrective action and if it declines to take corrective action the agency should take appropriate administrative action to resolve the complaint.

Federal grantor agencies should develop a range of sanctions to assure compliance by grantees with statutes and regulations. Sanctions should include (1) full or partial fund cut-off in appropriate circumstances after notice and opportunity for hearing, (2) public disclosure of the failure to comply, (3) injunctive action in the Federal courts, (4) disallowance of a program or project cost expenditure that does not meet statutory or regulatory requirements, and (5) imposition of additional requirements by special conditions to new grants.

. Post award: grantors and the federal government should continue to encourage grantees to establish fair procedures for handling grievances of the performing contractor. These procedures should afford the contractor adversely affected a fair and impartial opportunity to present its views and should include an unconditional waiver of soverign immunity. Among the actions to which these procedures should apply are:

-- Performance by the parties to the contract;

-- Interpretation of and payment under the contract;

-- Termination of the contract.

Commentary

The proposed is consistent with Attachment O and OMB Circular A-102 and with the spirit and letter of the ABA's Model Procurement Code.

Recommendation No. 9

The nature of the recipient should be a basic consideration in instrument selection.

Commentary

Pub. L. 95-224 provides simple criteria which do not address the basic relationships which exist and should be established between the Federal government and different types of recipients. Basic concepts of federalism and national policies concerning the relative roles of the Federal, state, county, municipal and other governmental bodies should govern the relationships to be established in Federal programs rather than any narrow procedural rules for instrument selection or making procurement-assistance distinctions. Related concepts of academic freedom, limitations on the Federal role, etc. should be considered in selecting the types of relationships and degree of involvement and control in relation to universities and other private organizations which fulfill important public service missions.

Recommendation No. 10

OMB's authority to grant exceptions from Pub. L. 95-224, the Federal Grant and Cooperative Act of 1977, should be extended.

Commentary

Until Pub. L. 95-224 can be amended to provide OMB with broad authority and flexibility to providing guidance for Federal assistance activities, OMB will need to be able to continue granting exceptions to the act where it impairs the implementation of Federal programs. The most serious situation arose in connection with Revenue Sharing, where the PL 95-224 definition would have made such payments a grant and thus required the Treasury Department to use a grant agreement resulting in subjecting the program to cross-cutting requirements which had been deliberately excluded from the Revenue Sharing Act.

To the extent that members of the Section of Public Contract Law, American Bar Association can be of service to the Office of Management and Budget, we offer any help we may be able to give. In making the recommendations and comments herein contained, it is again stated that the opinions of the Section of Public Contract Law are not necessarily the opinions of the American Bar Association.

Sincerely yours,

Theodore M. Kostos

Theodore M. Kostos
Chairman

TMK:
cc: Mr. Thomas L. Hadd

AICPA

American Institute of Certified Public Accountants
1620 Eye Street, N. W., Washington, D. C. 20006 (202) 872-8190

April 28, 1981

The Honorable David Durenberger,
Chairman
Subcommittee on Intergovernmental
Relations
Committee on Governmental Affairs
United States Senate
507 Carroll Arms
Washington, D.C. 20510

Dear Senator Durenberger:

The American Institute of Certified Public Accountants (AICPA), the national professional organization representing over 165,000 CPAs in the United States, is pleased to comment on S. 807, the "Federal Assistance Improvement Act of 1981" and S. 45, the "Federal Assistance Reform Act of 1981." The AICPA believes that the goals of these bills, designed to simplify and streamline the administration of approximately 500 Federal assistance programs, are important legislative initiatives and accordingly applaud and support your efforts.

We strongly endorse the current language dealing with who may perform audits, now contained in Title II of S. 807 and S. 45, specifically the GAO definition of public accountants: "The term public accountants means certified public accountants, or licensed public accountants licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State." This definition supported by Congress and the GAO for over ten years is identical to the definition contained in a similar grant reform legislation, S. 878, introduced by Senator William V. Roth in the 96th Congress and passed by the Senate.

The GAO, after extensive study and analysis, concluded that only independent public accountants who have demonstrated their competence by meeting the rigid requirements for becoming certified public accountants should be selected and utilized. They also concluded on grounds of equity, that certain non-certified public accountants already conducting such audits, would be permitted to continue provided in general that they were licensed by a regulatory authority of a State prior to December 31, 1970.

The issue of those best qualified to conduct these audits received substantial Congressional consideration and was fully debated by the 96th Congress. Former Comptroller General Elmer Staats in a November 19, 1980 letter to the Honorable James R. Sasser, reaffirmed the GAO position on the issue of "public accountants."

For your information, we are enclosing several pieces of related correspondence highlighting the need for consistent adherence to the highest standards of demonstrated competence to ensure accomplishment of the goals envisioned by this legislation.

Sincerely,

Theodore C. Barreaux
Vice President - Washington

cc: Honorable William V. Roth
Honorable James R. Sasser

Attachments

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-148144

May 28, 1975

The Honorable Abraham A. Ribicoff, Chairman
Committee on Government Operations
United States Senate

Dear Mr. Chairman:

We are writing in response to the letter of February 20, 1974, from Senator Sam J. Ervin, Jr., then Chairman of the Committee on Government Operations and the joint letter of July 23, 1974, from Senator Ervin and Senator Lee Metcalf, Chairman, Subcommittee on Reports, Accounting and Management. Those letters expressed concern over our recommended policy issued in September 1970, which stated that after December 31, 1975, only certified public accountants (CPAs) and those public accountants licensed before December 31, 1970, should be engaged to make audits of federally chartered, financed, or regulated private organizations. In 1972 we included this policy in our "Standards for Audit of Governmental Organizations, Programs, Activities & Functions" and thereby gave it a broader application.

In making our recommendation on this matter, we were not unmindful that we are not specifically authorized to prescribe the professional qualifications for public accountants to do government work and that our recommendation was only advisory. The standards in our recommended policy become mandatory only when prescribed by a statute or incorporated in agency regulations, and then only if Federal funds are involved. However, we recognize that our recommendation is influential.

For the past few months we have been reconsidering the recommendation we made on this subject. We have now completed our reconsideration and are presenting our conclusion in this letter for your information. We reached our conclusion only after the most careful deliberations and after considering a great amount of material provided to us by the American Institute of Certified Public Accountants and the National Society of Public Accountants.

Because this is an important matter, we present below the more essential facts we considered and the bases for our conclusion.

REASONS FOR GAO'S INVOLVEMENT

Our statutory responsibilities include surveillance over the expenditure of Federal funds including those made available to State and local governments through grants and revenue sharing. Our responsibilities further include providing information on such expenditures to the Congress.

In carrying out these responsibilities, we use the work of other auditors, including that performed by public accountants; therefore we have a great interest in being sure that such auditors do satisfactory work for Federal agencies and for State and local governments involved in administering Federal programs.

By issuing the standards cited above, we hoped to encourage auditors who do work for all levels of government to perform audits that would be as useful as possible in aiding congressional oversight of the use of Federal funds and to increase Federal reliance on work done by or for State and local auditors. Achieving such objectives requires a high level of performance by auditors.

Governmental entities provide some of the most diverse and challenging work in the accounting and auditing field. Accordingly, Government departments and agencies need the best audit skills obtainable. Authorizing auditors who have not demonstrated that they possess such skills to render opinions on financial statements will not provide the public with the protection it needs.

THE ISSUE

The field of public accounting services is a broad one. Public accountants often provide bookkeeping services, assistance in income tax matters and expert accounting services, as well as perform audits that lead to rendering opinions on financial statements.

Our recommendation relates only to the latter; that is, the function of auditing financial accounts and transactions and expressing an opinion on whether an organization's financial statements fairly present its financial condition as of a given date and the results of its operations for an accounting period ended on that date in accordance with generally accepted accounting principles consistently applied or with other specified accounting principles applicable to the organization. Nothing in our recommendation would prohibit unlicensed or noncertified accountants from providing bookkeeping services, expert accounting services, or other services not requiring a financial audit leading to an opinion on financial statements, or from serving as employees of qualified public accountants who assume responsibility for opinions on financial statements, if the laws of their States permit them to do so.

The audit standards that we issued in 1972 provide not only for financial audits but also for audit work assessing whether desired results are attained under government programs and whether funds are used efficiently and economically. There is no profession which is, by statute, specifically authorized to, or precluded from, performing audits of efficiency and economy of operations or evaluating whether desired results have been achieved by governmental programs. Accordingly, noncertified accountants and CPAs alike may do such work, if otherwise qualified or capable.

Therefore there are many areas of accounting and auditing in which accountants may render service to governmental clients. Our recommended policy applies to only one area--rendering opinions on financial statements. These opinions have special importance because third parties rely on the professional opinions in making investments, such as purchasing municipal bonds, and for other important financial decisions. The practice of establishing standards for those who perform this service is analogous to what States require in other professions, such as law, medicine, and nursing. The ultimate purpose of such professional standards is to protect the interest of the public who uses those services.

BASES FOR OUR CONCLUSIONS

Few will dispute that governmental financial statements include many complex and complicated accounting transactions. It follows, therefore, that the highest type of skills are needed to audit and give opinions on these statements. To be sure that those who undertake such work possess such skills requires establishing criteria to measure competence.

The CPA uniform examination was established for this purpose. This examination is prepared by the American Institute of Certified Public Accountants and is given semiannually by each of the 50 States and the District of Columbia. State laws govern who shall be qualified to take the examination. It is graded centrally for the States by the American Institute.

State requirements for noncertified public accountants differ widely.

--Seven States and the District of Columbia do not impose any requirement on persons practicing public accounting and rendering opinions on financial statements; they do, however, restrict the use of the title "certified public accountant" to those who have passed the examination.

- --Eleven other States license or register persons in addition to CPAs, on a continuing basis, to practice public accounting and render opinions on financial statements, if they meet certain requirements. These requirements differ widely from State to State, but none is as stringent as the requirements for becoming a CPA. However, only CPAs may use that title.

- --The remaining 32 States permit no one to practice public accounting except CPAs and those public accountants who were in practice or who met other stated requirements when legislation limiting the practice of public accounting was adopted.

Because of these divergent State requirements, the question is how the Federal Government can assure itself that those engaged to give opinions on financial statements possess the required skills. We believe that, to the maximum extent practicable, the Federal Government should rely on the standards and qualifications established by the individual State governments. However, for public accountants other than certified public accountants, there are no uniform requirements and no effective regulation in some States. For CPAs there is a uniform examination, a major portion of which is designed specifically to test the candidates' ability in precisely that area of accounting practice.

Even though other public accountants may be licensed or registered, there is no requirement for a uniform examination. As indicated previously, seven States and the District of Columbia permit individuals to practice without any requirements. Requirements in the 11 States that provide for registration and licensing of other public accountants vary from Ohio, which requires only that a licensee have a bachelor's degree in accounting, to Arizona, which requires that a licensee have a bachelor's degree and 2 years' experience in accounting and that he pass a portion of the CPA examination. In no case are the requirements as challenging as those required for the certified public accountant, and in no case is there as clear a focus on the candidate's ability to render opinions on financial statements.

It is interesting to note that Indiana, Iowa, New Hampshire, and South Carolina, which did not have a class of licensed or registered accountants, have, in the last 4 years, created one for accounting practitioners. However, none of these States permit these licensed or registered accountants to render opinions on financial statements. In fact, since September 1970, 11 State legislatures have rejected proposals which would have created a class of accountants, in addition to certified public accountants, which would have authority to render opinions on financial statements. Consequently, it appears that many States have reached conclusions similar to those we have reached on this matter.

About 15,000 public accountants belong to the National Society of Public Accountants. This organization has an accreditation program designed to establish the competence of its members. We have reviewed the examination used in that program and find that it is far less demanding than the CPA examination and far less useful as a test of the candidate's ability to render professional opinions on financial statements.

As we advised Senators Ervin and Metcalf in our letters dated August 7, 1974, we considered the possibility of GAO's giving an examination to test the competence of accountants and auditors to do government auditing. We have since concluded that the cost of such a program would be far greater than its benefits. The only function that our recommendation limits to certified public accountants is an audit leading to an opinion on financial statements. The CPA examination is designed to test an applicant's knowledge of accounting theory, auditing principles, and business law, as well as his ability to apply such knowledge to practical problems--all leading to the expertise needed to perform financial audits and render opinions on financial statements. If we did give an examination, it would be at least as difficult as the CPA examination. Since that examination is available, it would be duplicative to create a separate examination for the same purpose.

A second issue brought to our attention was that there were not enough CPAs to do the necessary work. However, our information shows that there are 107,000 CPAs who are members of the American Institute. This is an increase of 32,000 since 1970. There are perhaps 45,000 additional CPAs who are not members of the Institute. (Records are not readily available on this, so the figure is estimated.) Institute records show that its members are widely dispersed throughout the United States, even in sparsely settled States. For example, there are 222 practicing CPAs in Montana, 235 in Idaho, and 83 in South Dakota. Moreover, CPAs are accustomed to traveling to do work for clients. Accordingly, we believe that any governmental unit that wishes to engage a certified public accountant to give an opinion on its financial statements will be able to find one without difficulty.

When we issued our recommended policy statement in 1970, we provided a 5-year grace period so that those noncertified accountants who wished to do Government work requiring opinions on financial statements could have an opportunity to pass the CPA examination. The National Society of Public Accountants advised us, however, that many of its members could not qualify for the examination because they could not meet the experience or education requirements of the States in which they resided or practiced.

We have looked into this and found that the education and experience requirements for taking the CPA examination and for obtaining a license to practice as a CPA vary greatly from State to State. In many States there are provisions for partially substituting experience for educational requirements and vice versa. In others there are provisions that the State accountancy board can waive some or all of the educational requirements on the basis of a special test or other demonstration of capability which meets the board's standards.

For example, in Arkansas a candidate may sit for the CPA examination if he has a college degree in accounting or its equivalent. However, the board may waive this educational requirement if the candidate passes a special written examination. To obtain a license to practice as a CPA after passing the examination, the candidate must have had 2 years' experience in public accounting or similar work; however, if he has a master's degree, only 1 year's experience is required.

A candidate who is a high school graduate with 3 years' public accounting experience may sit for the CPA examination in Oklahoma. If the candidate has a college degree in accounting or the equivalent he needs no experience to sit for the examination. Once the candidate passes the examination, he receives a CPA license. There are no further educational or experience requirements.

In its recently recommended "Model Accountancy Bill," the American Institute of Certified Public Accountants provides for an educational requirement of a college degree for the first 5 years of the act and for an additional 30 semester hours of study thereafter. However, the proposed act also provides that the board may waive the educational requirement on the basis of the result of a special written examination to ascertain that the candidate is educationally well equipped.

For those who meet the above educational requirement, the Institute's model act recommends that no qualifying experience be required. Forty-two States now have provisions which allow candidates without any experience to sit for the examination, if they meet specific educational requirements.

The American Institute developed the model accountancy bill for use in a new State legislative program which, we were informed, is being actively pursued by the Institute and State CPA organizations.

In view of the above, we believe that in most States an accountant who has sufficient knowledge and training will be able to sit for the CPA examination and, if he passes, be licensed as a certified public accountant. In addition, as cases are brought to its attention when candidates are unable to sit for the CPA examination or to be licensed as CPAs after passing the examination, the Institute replies to the candidates citing its position on educational and experience requirements and sends copies of the responses to the respective State boards. The Institute has informed us that it will continue to assist the individual candidates as much as possible.

CONCLUSION

We believe it is in the Government's interest that our recommendation remain unchanged. We believe also that, when the Government engages public accountants, it needs the best qualified ones it can get. It is clearly far less costly to the Federal Government to rely on the State-sponsored CPA examination as a means of testing competence to give opinions on financial statements than it would be for us or for any other Federal agency to administer a separate test. No other existing test seems as well suited to this purpose as the CPA examination.

Public accountants who do not meet the qualifications we recommend may do many other types of governmental accounting work, including, but not limited to, audits of efficiency and economy of operations, audits of effectiveness, and accounting systems design work.

We shall be pleased to discuss this matter with you or your staff if you desire.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

SUMMARY OF STATE ACCOUNTANCY LAWS

Permissive (3)

Delaware
Kansas
Wyoming

Regulatory-Dying Class (37)

Alabama
Alaska
Arkansas
Arizona
California
Colorado
Connecticut
District/Col.
Florida
Hawaii
Idaho
Illinois
Kentucky
Louisana
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Nebraska
Nevada
New Jersey
New York
North Carolina
North Dakota
Pennsylvania
Rhode Island
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Guam
Puerto Rico
Virgin Islands

Additional Class (14)

Georgia
Indiana
Iowa
Maine
Montana
New Hampshire
New Mexico
Ohio
Oklahoma
Oregon
South Carolina
South Dakota
Tennessee
Vermont

Note:

Permissive States -- Only CPAs are licensed, and only the use of the CPA title is regulated.

Regulatory-Dying Class -- Only CPAs are licensed on a continuing basis; generally, only PAs in practice on the effective date of the State law are licensed or regulated

Additional Class -- Law provides for continuing licensing or registering of public accountants or accounting practitioners under requirements lower than those applicable to CPAs. Accounting practitioners are not permitted to perform audits.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

May 12, 1970

B-148144

HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

Subject: Qualifications of public accountants making audits of federally chartered, financed, or regulated private organizations

Since 1960 the position of the General Accounting Office with respect to the qualifications of public accountants making audits of federally chartered, financed, or regulated private organizations has been summarized in the following language.

> "The accounts of the (enterprise) shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of a State or other political subdivision of the United States."

"Generally accepted auditing standards," as used in the foregoing language, are the standards which have been adopted by the accounting profession to apply to audits of the accounts, financial transactions, and financial statements of an organization.

The effect of this language is to recognize the requirements established by the States when, through licensing or certification procedures, individuals or firms are qualified as certified public accountants or licensed public accountants and made subject to regulations, disciplinary measures, or codes of ethics prescribed by law. Although certification arrangements leading to the CPA certificate exist in all States, procedures for the continual licensing of public accountants have been established in only 11 States. These licensing requirements, varying considerably and not all of high quality, are shown in the attachment to this letter.

The above language, which has come to be known as the "General Accounting Office model audit language," has been included in several public laws and in many agency regulations. When this language was adopted in 1960, the number of organizations subject to these audit prescriptions was relatively small and the public's concern was not as great as it is today. Since that time, the number and size of such organizations have multiplied to the point where it is now estimated that public accountants are auditing

50,000 or more such audit organizations and the amounts of money involved are in tens of billions of dollars. The public's interest has become increasingly great and has caused us to review the position which our Office recommended in 1960 setting forth minimum qualifications of public accountants whose audits, in many cases, are important means by which the public interest is protected.

Our deliberations led us to consider, first, the varying degrees of quality of the States' requirements for certifying or licensing public accountants and, second, the adequacy of the supply of qualified public accountants to take care of prospective work.

Our review of the various States' requirements disclosed a wide disparity in standards. The one common denominator we observed was the fact that all States provided for issuing CPA certificates to only those who passed rigid uniform examinations.

Our inquiries into the adequacy of the supply of public accountants was limited by the lack of data. We were able to obtain reasonable estimates of the number of certified public accountants in the United States, which indicated that the number was doubling approximately every 12 years. The estimated growth from 1960--from about 70,000 then to about 112,000 in 1969--is reflected in the following table.

Number of Certified Public Accountants
1960-69
(estimated)

1960	70,000	1965	92,000
1961	76,000	1966	98,000
1962	79,000	1967	101,000
1963	84,000	1968	107,000
1964	88,000	1969	112,000

This relative increase is certainly as large as, if not larger than, that of the population, of the national economy, and of governmental expenditures--Federal, State, and local--during that period. There is every indication that the number of certified public accountants will continue to grow at an accelerated rate over the foreseeable future.

On the basis of these considerations, we have concluded that, as soon as practicable, only independent public accountants who have demonstrated their competence through meeting the rigid requirements for becoming certified public accountants should be selected to audit private organizations which are chartered, financed, or regulated by the Federal Government.

At the same time, we believe that the noncertified public accountants now making such audits should not summarily be deprived of this kind of work but should have a reasonable period of time in which to qualify themselves as certified public accountants. In our opinion, a reasonable period is 5 years.

During this period, the head of the agency responsible for the programs requiring audits by public accountants should have the authority to accept nonlicensed public accountants in those States which do not provide for licensing individuals who meet the standards of education and experience representative of the highest standards prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants. The head of the agency should also have the authority to require either certified public accountants or licensed public accountants, when deemed necessary to protect the public interest, to meet higher standards of education and experience than those required by the public accountancy regulatory authorities of the States.

We have recently recommended to the House Committee on Education and Labor the inclusion of the following language in a bill it is considering.

> "Such audit shall be conducted in accordance with generally accepted auditing standards by independent Certified Public Accountants who are certified by a regulatory authority of a State: Except that for a period ending December 31, 1975, such audits may also be conducted by (1) independent public accountants who are not certified but who are licensed to practice by a regulatory authority of a State, or (2) by independent public accountants who, although not so licensed or certified, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations: Provided, that if the Secretary deems it necessary in the public interest, he may prescribe by regulation higher standards than those required for the practice of public accountancy by the regulatory authorities of the States."

We recommend that the position relating to the qualifications of public accountants set forth in this language be incorporated in regulations issued by departments and agencies prescribing the qualifications of public accountants selected to audit programs administered by the departments and agencies.

Elmer B. Staats

Comptroller General
of the United States

Attachments:

1. Classification of States by public accounting licensing arrangements

2. Summary of qualification requirements in the 11 States which provide for continuing licensing of uncertified public accountants

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-148144

September 15, 1970

HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

Subject: Qualifications of public accountants making audits of federally chartered, financed, or regulated private organizations

By our circular letter of May 12, 1970, (B-148144) we advised you of a change in our position regarding the qualifications of those who may be selected to audit federally chartered, financed or regulated private organizations. The major change from our previously announced position was that after December 31, 1975, only certified public accountants should be selected to make such audits.

Since announcing this revised position we have received information and have had consultations which convinced us of the desirability of making a further revision in our position. Instead of limiting such audits to only certified public accountants after December 31, 1975, we believe it equitable that those licensed public accountants who received their licenses on or before December 31, 1970, also be permitted to perform such audits after the December 31, 1975, cut off date. This has the effect of creating a terminating class of public accountants who throughout their active careers will continue to be eligible for such work.

In accordance with this revised position, we recommended to the House Committee on Education and Labor, in lieu of our previous proposal, the inclusion of the following language in a bill it is considering.

> "Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to

practice by such regulatory authority after December 31, 1970, and persons who, although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975: Provided, that if the Secretary deems it necessary in the public interest, he may prescribe by regulation higher standards than those required for the practice of public accountancy by the regulatory authorities of the States."

We recommend that the position expressed in the above language, rather than that proposed in our May 12, 1970 letter, be incorporated in regulations issued by departments and agencies prescribing the qualifications of public accountants selected to audit programs administered by the departments and agencies.

Elmer B. Staats
Comptroller General
of the United States

May 1, 1981

The Honorable David Durenberger
U.S. Senate
353 Russell Senate Office Building
Washington, DC 20510

Dear Senator Durenberger:

We are hereby submitting testimony which we request be placed in the record of hearings on S. 45, the Federal Assistance Reform Act.

Should there be any questions about this request, please have your staff contact Ellen Hoffman at the Children's Defense Fund, [illegible]-1470. Thank you.

Sincerely,

CENTER FOR COMMUNITY CHANGE
CENTER FOR NATIONAL POLICY REVIEW, OF
CATHOLIC UNIVERSITY LAW SCHOOL
CHILDREN'S DEFENSE FUND
COUNCIL FOR EXCEPTIONAL CHILDREN
FOOD RESEARCH ACTION CENTER
LEAGUE OF WOMEN VOTERS
NATIONAL BLACK CHILD DEVELOPMENT INSTITUTE
NATIONAL EDUCATION ASSOCIATION
NATIONAL URBAN LEAGUE
NATIONAL YOUTH WORKERS ALLIANCE
UNITED AUTOMOBILE WORKERS

TESTIMONY ON FEDERAL ASSISTANCE REFORM ACT

As members of a concerned coalition, we are grateful for the opportunity to submit testimony about S. 45, the Federal Assistance Reform Act, and S. 807, the Federal Assistance Improvement Act. We represent a broad range of interests: labor, housing, food, civil rights, education, health, rights of disabled citizens, and children's issues. Some members represent beneficiaries; others represent those who serve them. Despite our diversity, we are united in our concern about the effects of S. 45 and S. 807.

Federal assistance programs are lifelines for many of the poor, handicapped, and minority people we represent and serve. It is because of the critical importance of these programs to these vulnerable groups that we are concerned about S. 45 and S. 807.

We applaud the sponsors of this legislation for addressing some of the most complex and challenging aspects of the relationship between the federal government and recipients and beneficiaries of its programs. We do share a common goal of seeking maximum effectiveness from federal programs and resources in meeting national needs.

We believe that some of the changes made by these bills move us closer to that goal. The financial management and auditing procedures of S. 807's Title II, for example, will improve program administration without sacrificing fiscal responsibility. But other changes are counterproductive.

In this testimony we will focus on what we consider to be the problem areas in the bills, and on some possible remedies. Briefly, these concerns are:

1) the federal presence in assistance programs has been critical in ensuring delivery of benefits to beneficiaries who desperately need them. Withdrawing this presence may result in benefits not being delivered to those who need them most.

2) consolidation of federal assistance programs may be desirable in some instances. But consolidation of programs carefully constructed by Congress over the last thirty years should be approached carefully, and not by fast track legislation which circumvents the normal legislative process and encourages hasty dismantling of programs rather than thoughtful assessment of alternatives.

3) imposition of across-the-board standardization of federal regulations and monitoring procedures affecting generally applicable requirements is unnecessary and may be inappropriate in some areas.

4) certification of state and local enforcement procedures, and waiver of regulatory changes, should be accompanied by protections which ensure that underlying program purposes are not undermined.

5) changes in maintenance of effort and single state agency requirements may slash benefits and undermine the fair, uniform administration of federal assistance programs.

1. The Federal role in assistance programs has often been essential to ensure delivery of benefits to the truly neediest who depend upon them.

It is true that some federal assistance programs have failed, or have created administrative burdens for state and local governments which outweigh the value of the federal requirements. We do not contend that every federal categorical program, regulation, or civil rights compliance order has worked. It is healthy that we are now assessing what has worked, what did not, and why.

But many of the federal assistance programs have worked. As a result of the programs passed by Congresses in the 1960s, fifteen million Americans were removed from poverty. As a result of the civil rights laws of the '60s, thousands of black young people got an opportunity to go on to college, law and medical schools. The number of black lawyers increased by 25 percent and black doctors by 48 percent.

Medicaid has helped close the health care gap between the poor and the non-poor. A Public Health Services study has shown that Medicaid, in combination with Medicare, is the primary cause for the declining importance of income as a determinant of health care utilization in this country.

Nutrition programs have had enormous impact. In the late 1960s the Field Foundation found widespread hunger and malnutrition among the poor of the United States. A decade later, the Foundation found that the health and well-being of poor families in the communities it had studied were greatly improved. It identified Food Stamps as the key factor in this change. Studies have shown that the WIC program of nutritional supplements for mothers and children nutritionally at risk has significantly reduced infant mortality rates and the incidence of low birth weight infants, who often require long and costly hospitalization.

Some of these gains were possible only after federal leadership filled a vacuum left by state inaction. Before the passage of P.L. 94-142, the Education of All Handicapped Children Act, over two million children were out of school altogether. Countless more were in school but were inappropriately placed or were not getting the services they needed.

Many of these children could have made giant steps with appropriate educational services; research has shown that there are real differences among children with special needs, and that with appropriate instruction all such children can improve the extent to which they are independent. Yet many states were unable or unwilling to meet the special needs of these children: 48 of the 49 states with compulsory attendance laws exempted handicapped children from compliance. The scarcity of knowledge, programs, funds, and commitment to helping special needs children and their families was staggering. Federal assistance in this area was necessary, appropriate, and effective.

Sometimes special federal protections attached to assistance programs are as important as the provision of the assistance itself. Shortly after the enactment of the Elementary and Secondary Education Act, an education program for educationally disadvantaged children, federal auditors found problems. Money was spent in some localities on band uniforms, portable swimming pools, and construction rather than on instructing low-income children in basic learning skills. As Congress built on program experience, initially ambiguous provisions became more focussed. As legislation became more specific about program requirements, the program became more successful in targeting remedial services to disadvantaged students. And those students increasingly showed dramatic improvement in reading and mathematic skills.

This is a time when all of us must be tough-minded about our priorities. We recognize that we cannot afford to throw money thoughtlessly at any of our problems. Where federal assistance has become overly complex or burdensome, it is appropriate that we take a hard look at other methods of providing help. But let us not forget that some of these programs have been effective. Let us not discard what works in the rush to simplify. And let us not create procedures for "simplification" which encourage rash or unthinking action when the stakes are so high.

2. We oppose creation of a "fast track" for Presidential consolidation proposals which emphasizes speed at the expense of a meaningful Congressional role in decisionmaking. S. 45 and S. 807 change Senate and House rules to create an expedited process for consideration of block grant proposals. These changes undermine the role of authorizing committees by creating automatic discharge procedures. They make consolidation

of longstanding programs created by Congress an Executive function by providing that the President can amend consolidation proposals, though authorizing committees and legislators on the floor cannot. They limit careful scrutiny by placing a ninety day limit on Congressional reaction to Presidential consolidation proposals. And they inhibit thoughtful discussion of block grant proposals by departing from normal rules governing consideration on the floor.

Collapsing a number of categorical assistance programs into a single consolidated program is not easy. Different programs have different matching provisions, eligibility criteria, and maintenance of effort requirements. Some programs have procedural protections and targeting requirements tailored to meet the needs of a specific beneficiary population. Sometimes, as in the Title I education programs, these protections are crafted by Congress in response to demonstrated problems with how state or local recipients handle federal assistance. The decision about how to combine all these aspects of different programs into a single program is a difficult one, with far-reaching policy implications.

A consolidation provess that denies Congress adequate time and information for consideration invites serious unintended consequences. For example, programs with similar primary goals often have substantially different impact on jobs, economic development and the efficacy of services provided. The process proposed in these bills offers no assurance that the necessary data and time required to analyze and anticipate such consequences would be available to the Congress.

Congress has historically played an important role in shaping federal assistance policies. Authorizing committees have built up a wealth of expertise about the operation of the programs within their jurisdiction. Amendments, both in committee and on the floor, often tighten and improve legislation. Hearings and debate sharpen Congressional understanding of fundamentally important issues. Yet the fast track would make Congress a reactor rather than an equal partner in making basic decisions about the role of federal assistance.

To the extent that the legislative process is abused, or stands in the way of important change, the Senate already has the tools to respond: it can vote to discharge a committee, to limit debate, or to refuse reconsideration. The fast track is unnecessary to deal with abuses and inappropriate insofar as it creates a new, more junior role for Congress in making decisions which have historically been legislative ones.

3. We are concerned about Title IV of S. 45 and Title III of S. 807, which create a uniform process for developing standard regulatory and compliance provisions for any "generally applicable requirement" affecting federal assistance programs. These requirements include civil rights provisions guarantee to equal access to services, equal employment requirements, labor practices requirements (such as the Davis-Bacon Act); and other important employment protections.

Our objections to these titles are based on four concerns. First, the process they create is unnecessary. The President already has authority to designate a lead agency to oversee development of cross-cutting regulations and to monitor government-wide implementation of cross-cutting requirements. The President has exercised this option in the past, for example by designating the Department of Justice as the lead agency for implementation of Title VI.

Second, creating standard regulations and compliance procedures is appropriate in some, but not all, programs. Standardizing cross-cutting requirements may sacrifice important protections. A provision which addresses equal services in highway construction programs will not adequately address migrants' access to medical care or the elderly's access to subsidized housing. Anti-discrimination provisions carefully developed to reflect the service delivery issues particular to given programs could be lost.

Standardizing monitoring may weaken meaningful evaluation. Different programs require different data and different monitoring approaches. Equal access to services under the Urban Mass Transportation Act depends on geographical data such as information on route scheduling and age and quality of buses assigned to routes. This approach is meaningless in monitoring placement of handicapped children in the least restrictive educational setting possible.

Third, we are concerned about the process for developing cross-cutting regulations and compliance procedures. In both bills, opportunities for public participation are minimal.

Federal assistance recipients and beneficiaries deserve a voice in regulatory changes which may have a profound impact on them. This is of particular importance when we visualize that, increasingly, federal money may be distributed to state and local governments totally lacking targeting and other protections which would ensure cost-effective expenditures and accountability.

The bills contain no clear opportunity for prior notice and comment, and the relationship of the procedures outlined in each bill to Administrative Procedure Act ("APA") requirements is unclear. Some agencies affected by cross-cutting regulations are subject to APA notice and comment requirements. Others, while also potentially affected by cross-cutting regulations, are exempt from the APA. The relationship of S. 45 and S. 807 to the APA must be clarified.

Fourth, we are seriously concerned that a provision in S. 807 would allow the President to suspend implementation of a cross-cutting standard for up to 180 days if he finds that implementation will lead to "serious, unanticipated consequences." This provision authorizes the President to suspend operation of statutorily mandated federal assistance policy without consent of Congress, As the bill is drafted, it suggests that fundamental federal assistance requirements, including civil rights provisions, could be suspended after pre-existing regulations had been repealed, leaving a complete vacuum for up to half a year. If the intent of this provision is to suspend operation of a crosscutting standard while leaving in place the pre-existing regulations, this intent must be clarified.

5. Changes in maintenance of effort requirements and single state agency provisions may drastically cut benefits to beneficiaries and undermine uniform program administration. Two provisions in Title VI of S. 807 give rise to serious question. First, Title VI provides that, regardless of authorizing legislation which requires that a single state agency administer federal assistance, a federal agency head can waive the single agency requirement and allow states to delegate administrative responsibilities to multiple state or local agencies.

The provision for waiver of single state agency requirements allows federal agencies to reverse Congressional findings that a single agency is necessary to properly administer a particular program. In federal assistance programs such as Medicaid and Aid to Families with Dependent Children, which require statewide program uniformity, waiver of this requirement state agency may result in balkanized, inefficient, and inequitable administration and policies which differ by locality. Enforcement of overarching program requirements would be difficult, since there would not be one agency with responsibility and accountability for the program. There may be programs in which federal agencies should have the flexibility to determine the appropriate state or local administrative structure. But it is inappropriate to create wholesale waiver provisions.

Second, Title VI would repeal all existing maintenance of effort requirements which guarantee that federal assistance will supplement, not supplant, state or local expenditures. Under Title VI, all future maintenance of effort provisions would include standard language outlined by the bill. Since the provision repeals all existing maintenance of effort provisions and creates a standard provision for inclusion in future legislation, it leaves an enormous gap; unless Congress acts to pass maintenance of effort provisions for each existing federal assistance program, each program will lose the state or local funds heretofore contributed.

Requiring Congress to review each federal assistance program to evaluate whether a maintenance of effort provision should be reinstituted will place a heavy burden on authorizing committees. Yet unless Congress undertook a program-by-program review of each and every program containing a maintenance of effort requirement, program benefits could be cut back sharply. because of the loss of the state and local contribution.

Further, because S. 807's standard maintenance of effort provision may differ substantially from existing provisions, substitution of the standard provision may have unanticipated results: it may dramatically adjust the required state or local share upward or downward. Absent a careful review of how such a standard provision would change the state or local role in assistance programs, substitution of the standard provisions is premature and unwise.

CONCLUSION

We appreciate the opportunity to submit our comments on S. 45 and S. 807. As advocates experienced in working with federal assistance programs, we appreciate as well the Committee's sensitivity to problems in administering those programs. We, too, are eager to see programs improved where appropriate and necessary. But we urge that such changes be made thoughtfully; where the solutions are ill-advised, or have consequences which threaten underlying program purposes, they are neither "reform" nor "improvement."

We would be glad to work with the Committee to develop language which would address these concerns.

child welfare league of america, inc.

STATEMENT OF THE CHILD WELFARE LEAGUE OF AMERICA, INC.

COMMITTEE ON GOVERNMENTAL AFFAIRS

U.S. SENATE

APRIL 30, 1981

S. 45 and S. 807

The Child Welfare League of America is a federation of child and family serving agencies in the United States and Canada. Along with its divisions, the American Parents Committee, the North American Center on Adoption, the Hecht Institute for State Child Welfare Planning, and the Office of Regional, Provincial and State Child Care Associations, the League represents over 1,600 agencies which are responsible for the delivery of services to children and their families. The League is directed by a board of lay and professional leaders, and is supported by dues and fees, as well as restricted foundation grants, Federal government project grants, charitable contributions, and United Way contributions.

The Child Welfare League's "Statement of Principles and Policies" declares that, "the ultimate responsibility and duty of government that all children receive the services they need, may be accomplished by a stimulating and collaborating in the development of voluntary services, as well as by providing direct services." The League has both voluntary and public members, and because of this partnership, we believe that it is important to address the provisions of this bills which stimulate the delivery of services, as well as those provisions which might ultimately impede the delivery of service to children and their families.

The Child Welfare League is concerned about the philosophy of consolidation and its affect on children's programs. Programmatic consolidation is a simple answer for complex needs. In the field of children's services, there are specific federal assistance programs which fund services for specific needs. These are programs which were developed with the collective wisdom of Congress, programs which had bi-partisan support. The needs of individuals are not easily met with programs which are blended together under the rubric of "recipient." Categorical programs address the special needs of individuals, and in the case of children and youth, of a constituency which does not have a voice -- that is, they do not vote. For this reason, the Child Welfare League believes that programs which are to be consolidated must be very carefully examined.

S. 45 provides a better criterion for consolidation than does S. 807. "Functionally related programs" more logically represents programs which serve "the same major purposes and provide assistance to the same type of beneficiaries" than those programs which fall within the same budget function. Programs which target children and youth fall within a number of budget functions, for example:

Function 450	Community Development Block Grants
Function 500	CETA Child Abuse Prevention and Treatment Head Start
Function 550	Medicaid Maternal and Child Health
Function 600	AFDC Food Stamps
Function 750	Legal Services Corporation
Function 850	General Revenue Sharing

Some of the programs which might logically fit together, such as AFDC Foster Care and Child Welfare Services (and they are carefully linked together in P.L. 96-272, the Adoption Assistance and Child Welfare Act), are in different budget functions.

The provision in Section 1006 of S. 807 which provides for the transfer of appropriations or other budget authority seems to make the "functionally related" definition of S. 807 unnecessary. The Child Welfare League does believe that the unification of funding through the transfer of appropriations or budget authority is a good provision; however, it would seem that the definition of "functionally related" in S. 807 provides for possibly arbitrary and inappropriate program consolidation.

While the goals for consolidation as enumerated in Section 1002 of S. 807 are quite laudable, it is our belief that the authorizing committees have the kind of programmatic understanding of the federal assistance programs which would safeguard against the possible abuses which might occur through hasty and inappropriate consolidation. The Child Welfare League is concerned that the automatic discharge provisions of S. 807 and S. 45, as well as the departure from the normal rules of floor consideration inhibit the contributions of the authorizing committees in an important process which could affect thousands of recipients.

Title II of S. 807 and S. 45 is a valuable contribution to both the public and voluntary sectors. We believe that the provisions of Section 203, especially that of uniform payment policies for grants, contracts, cooperative agreements, and other forms of Federal assistance, will enhance the delivery of services, and will enable agencies to make sound programmatic decisions based on realistic fiscal information. We believe tha equitable uniform payment and accounting principles will create a healthy relationship between the public sector and the voluntary sector in their purchase of service agreements. The accounting and auditing procedures also streamline the administration of federal assistance programs.

The Child Welfare League believes that the provisions in Title IV of S. 45, "Administration of Generally Applicable Federal Assistance Requirements," are sounder in terms of consistency for national policy. The interagency task force will ensure a greater degree of participation by those most familiar with the federal assistance programs and their national policies. We also believe that the task force will provide a more visible forum for affected recipients and beneficiaries, thereby increasing consumer input which the League deems critical.

In the provisions under Title V of S. 807, the League recommends that Section 806 be ammended to include affected recipients and non-profit organizations. This section, which provides for the development of an integrated program plan, mandates adequate consultation with affected local governments. It is our experience that input from consumers in the planning will enhance the efficiency of a program.

We believe that the provisions of Title V in S. 45 are sound and serve to enhance cost-effective service delivery while providing needed procedural safeguards. These provisions are not present in S. 807, and we believe that bill would benefit from similar sections devoted to procedural safeguards. We hope that when the Subcommittee on Intergovernmental Affairs marks-up the bills, however, that they will specifically include non-profit organizations in the notification provisions of Section 205, "Procedural Safeguards."

Finally, the provisions of Title VI of S. 807 could be very detrimental to children's services. Because children do not vote, their funds are the first to be cut at the state level as well as the federal level. The maintenance-of-effort provisions of a law such as P.L. 96-272, the Adoption Assistance and Child Welfare Act, are critical for the system change which is of primary benefit to thousands of children. This systems change is also cost-effective, but only if the level of service is maintaned. The provisions of Title VI would repeal all maintenance-of-effort requirements regardless of their intended purpose or need, and reinstate such a requirement at the will of Congress. The new maintenance-of-effort requirement is based upon the average expended base of the two preceding fiscal years. While this reinstatement is more conciliatory to programs, the waiver by a Federal agency head is problematic given the current fiscal realities of states which have enacted state tax cuts or spending ceilings. The possibility of such a waiver would have ramifications for state legislatures during their budget deliberations which could harm children's programs.

The Child Welfare League of America is sympathetic to the goals of the Subcommittee on Intergovernmental Affairs and the Committee on Governmental Affairs. We have labored for years with inconsistent and sometimes unknown accounting policies at the state level. Too much time and money has been expended on duplicative audits and regulations in times of shrinking fiscal resources. We do, however, firmly believe that planning for the needs of children and families is important, and that proper planning occurs with the participation of recipients and the service delivery community -- both public and voluntary. We believe that Congress has an important role to play, especially in regards to the needs of children and families. In this regard, Congress has protected the most needy of our society with the federal assistance programs which have been developed over the decades. These programs, many of which serve children and families, have benefited from Congressional debate through the process of authorization. We subscribe to the democratic process which allows for the debate of programs which are non partisan, and which have had bi-partisan support in almost all instances. We urge the committee to consider this function in the crafting of their consolidation bill, as well as the protections which have existed within the existing statutes.

The Child Welfare League thanks the committee for this opportunity of providing a statement, and we will be most happy to work with the committee in its deliberations.

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D.C. 20425

April 30, 1981

Honorable William V. Roth
Chairman, Committee on
  Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Roth:

Thank you for the opportunity to review S. 45, the proposed "Federal Assistance Reform Act of 1981." We have carefully considered this bill in the light of our considerable experience with previous efforts to increase flexibility in Federal assistance programs and with civil rights coordination and enforcement. We have also compared it to S. 807, the proposed "Federal Assistance Improvement Act of 1981," which was referred to us by the Office of Management and Budget. We are very concerned that either S. 45 or S. 807, if passed in its present form, could have serious civil rights consequences.

Enclosed are staff comments on specific provisions of S. 45, including some comparisons to parallel provisions in S. 807. The Commissioners will be considering the larger issues raised by these bills at our next meeting, and I shall communicate with you further following our discussion.

Sincerely,

FOR THE COMMISSIONERS

Arthur S. Flemming /mt

ARTHUR S. FLEMMING
Chairman

Enclosure

S. 45

THE FEDERAL ASSISTANCE REFORM ACT OF 1981

S. 45, the proposed "Federal Assistance Reform Act of 1981," is designed to simplify and coordinate the management of Federal assistance programs and their requirements. To carry out this purpose, the bill establishes procedures for effecting various types of integration and coordination. Title I establishes procedures for developing and expediting Congressional action on plans to consolidate Federal assistance programs. Title II establishes procedures for standardizing and integrating management and audit requirements. Title III mandates procedures for developing projects that integrate funds from several Federal grants programs. Title IV establishes procedures for coordinating requirements that apply to all or most Federal assistance programs, including nondiscrimination requirements. Title V includes miscellaneous provisions requiring full information on Federal assistance, procedural safeguards and regulatory flexibility, and analyses of administrative costs. It also mandates a study and a pilot program related to purposes and requirements of the bill.

TITLE I--CONSOLIDATION OF FEDERAL ASSISTANCE PROGRAMS

Title I establishes procedures which the President may use to gain expedited Congressional action on consolidation plans that meet specified criteria. We are concerned about the scope of consolidations this title would cover. We also are concerned about the lack of requirements to assure that consolidation plans adequately address the issue of civil rights enforcement. In addition, we question the wisdom of establishing expedited procedures that may limit consideration of the civil rights issues consolidation plans could raise.

Scope of Consolidations

On the basis of our experience with general revenue sharing and block grant programs,[1] we have grave reservations about any further consolidations of programs designed to increase opportunities for minorities and other protected groups. Such consolidations, we believe, should not be covered under special procedures that may limit thorough deliberation and debate. S. 45, the proposed "Federal Assistance Reform Act of 1981," would permit, under its procedures, consolidations of programs designed to promote equal opportunity. More generally, it does not clearly limit the size and scope of the consolidations it covers.

As provided in Section 1003(a) and Section 1004(a)(1), only functionally related programs may be consolidated under the procedures of S. 45. According to the definition in Section 1001(4), functionally related programs are programs which "have, in essence, the same major purposes and provide assistance to the same types of beneficiaries and recipient groups." These provisions would not permit consolidations so broad as those permissible under the parallel provisions in S. 807, the proposed "Federal Assistance Improvement Act of 1981." Sections 1001(4) and 1003(a) of the latter would allow the consolidation of any and all programs classified under the same general function in the Federal budget, regardless of their purposes or beneficiaries. Unlike S. 807, S. 45 also requires, in Section 1002, that proposed consolidations serve all the purposes specified, including the purpose, as specified in Section 1002(1), of facilitating the adaptation of Federal assistance programs to the particular needs of beneficiaries. Under Section 1002 of S. 807, a proposed consolidation could serve only one of the purposes specified. In addition, S. 45 prohibits, in Section 1004(a)(4), consolidations that exclude persons or groups eligible for assistance under the programs being consolidated. Section 1004(a)(4) of S. 807 prohibits instead the exclusion of the purposes and goals established under the consolidated programs. Comparison to S. 807 thus suggests that S. 45 is not intended to permit consolidations that improve efficiency and economy at the expense of beneficiaries and programs.

---

[1] U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--To Provide Fiscal Assistance (1975); Making Civil Rights Sense Out of Revenue Sharing Dollars (1975); and The Federal Fair Housing Enforcement Effort (1979). See also Center for National Policy Review, Civil Rights Under Revenue Sharing (1975); National Revenue Sharing Monitoring Project, General Revenue Sharing: The Case for Reform (1976); Urban Institute, Social Services: Federal Legislation vs. State Implementation (1978); Morton H. Sklar, "Equity Under CETA," Jobs Seminar (Research Institute on Legal Assistance of the Legal Services Corporation, 1979); Arkansas Advisory Committee to the U.S. Commission on Civil Rights, The Community Development Block Grant Program in Arkansas (1979); and Working Group for Community Development Reform, Monitoring Community Development (1980).

Nevertheless, the provisions of S. 45 do not preclude consolidations detrimental to the present beneficiaries of categorical programs, many of them minorities and members of other protected groups. First, the terms defining "functionally related" still would permit consolidations of programs serving an indefinitely broad range of purposes and beneficiary groups. Second, while S. 45 prohibits consolidations that exclude present beneficiaries, it does not prohibit consolidations that may result in reduced assistance to them. Thus, for example, S. 45 could permit the consolidation under its procedures of all education programs on the basis that they all serve the major purpose of improving education and benefit students. Under this possible consolidation, recipients would then be free to reduce, if not eliminate, any of the programs that now assist educationally disadvantaged children, desegregation efforts, handicapped children, sex equity projects, and other targets of equal educational opportunity grants. We, therefore, cannot support Title I in its present form.

Administration of Consolidated Program

Section 1003(b)(1) of S. 45 provides that the President shall designate a single Federal agency to administer each consolidation plan and all the assistance programs in it. Section 1004(a)(2) requires that the President select this agency from among the agencies responsible for administering at least one program included in the plan. Title I specifies no further criteria for selecting the administering agency. It also does not specify, or require the President to specify, the scope of responsibilities to be transferred to this agency. It thus makes no specific provisions for civil rights enforcement in consolidated programs.

Experience with at least one of the programs being consolidated is an important qualification for administering them all. It is not, however, sufficient to assure adequate civil rights enforcement in the consolidated programs. Our experience with general revenue sharing, in particular, indicates that serious violations may go unchecked for extended periods of time unless the responsible agency has the commitment and the resources to enforce civil rights.[2] The impact of consolidation on civil rights enforcement must be considered in any plan, including the portion of the plan that transfers responsibilities for administering the affected programs.

---

[2] The Federal Civil Rights Enforcement Effort--To Provide Fiscal Assistance and Making Civil Rights Sense Out of Revenue Sharing Dollars. See also General Accounting Office, The Revenue Sharing Act's 1976 Amendments: Little Effect on Improving Administration and Enforcement of Nondiscrimination Provisions (1980).that extend civil rights coverage

Section 1003(b)(1), therefore, should provide that the consolidation plan specifically require the administering agency or some other agency to enforce Federal civil rights laws and the regulations issued under those laws in the consolidated programs. It should further require that the plan indicate the designated agency's civil rights enforcement capacity, including its performance of its present enforcement responsibilities, identify any additional resources the designated agency will need to carry out its increased enforcement responsibilities, and explain how those resource needs will be met.

Terms and Conditions of Consolidated Programs

Section 1003(b)(2) of S. 45 provides that each consolidation plan shall specify in detail the terms and conditions under which the consolidated Federal assistance programs will be administered. It also requires that these terms and conditions be those included in one or more of the programs being consolidated and, further, that the plan include other conditions necessary to ensure that intended benefits are delivered to intended beneficiaries in a manner consistent with Congressional purposes. It, therefore, requires that consolidation plans include terms and conditions which extend civil rights coverage, if these are included in any of the programs being consolidated, and other terms and conditions which support civil rights compliance and enforcement.

Various programs that may be consolidated include civil rights terms and conditions beyond the coverage provided by basic civil rights statutes. There are also various program-specific terms and conditions that support civil rights compliance and enforcement. These include provisions requiring pre-award compliance reviews, citizen participation, affirmative efforts, accountability for those efforts, and specific procedures for protecting beneficiaries' rights. In addition, various programs include terms and conditions, such as maintenance of effort requirements, which are designed to prevent fiscal substitution. These not only help assure that Federal funds actually support program objectives, including equal opportunity objectives. They also help assure that Federal funds do not free up State and local funds for activities that may be discriminatory.

The limitations in Section 1003(b)(2) of S. 45 are, therefore, important because they require that terms and conditions which extend and support Federal civil rights requirements apply to all consolidated programs if they are included in any of the programs being consolidated. They also require that such terms and conditions be added if they are not in any of the programs, since they are necessary to ensure compliance with civil rights requirements enacted by Congress. By contrast, the parallel provision in S. 807, Section 1003(c), includes no limits on the terms and conditions under which consolidated programs may be administered. S. 807, therefore, would permit the elimination, through consolidation, of provisions intended by Congress to ensure equal opportunity.

We believe the intent of Section 1003(b)(2) of S. 45 would be clearer if it included a special reference to terms and conditions designed to ensure equal opportunity in all consolidated programs. It should also include examples to indicate the range and variety of terms and conditions that may contribute to civil rights compliance and enforcement.

Procedural Rules

Section 1005 establishes the procedures by which a consolidation plan covered under S. 45 will take effect. It provides in part that a plan will be introduced as a concurrent resolution (Section 1005(c)), that any committee with jurisdiction other than the committee with primary jurisdiction will have fifteen days to consider the resolution (Section 1005(d)(a)), that a motion to adopt the resolution cannot be debated, amended, or postponed (Section 1005(e)), and that the motion to adopt must be agreed to by both the Senate and the House within ninety days if the consolidation plan is to take effect (Section 1005(a)). In addition to these provisions, S. 807 provides, in Section 1005(d)(4), that the resolution shall be automatically placed on the appropriate calendar if the committee with primary jurisdiction has not reported it out within sixty days.

We anticipate that, if either S. 45 or S. 807 should become law, many of the consolidation plans submitted to Congress would raise important civil rights issues. We believe that the procedure for considering them should provide ample opportunity for expert testimony, public comment, and Congressional deliberation and debate. We do not believe that the procedural rules established under either S. 45 or S. 807 would achieve this objective.

TITLE II--FINANCIAL MANAGEMENT OF FEDERAL ASSISTANCE PROGRAMS

The general purpose of this title is to improve the financial management of Federal assistance by eliminating conflicting or redundant requirements and, at the same time, standardizing financial management and auditing procedures and requirements. We believe, however, a number of revisions are required to strengthen and clarify Section 204 of S. 45.

Section 204(b) of S. 45 provides that State governments are responsible for conducting financial and compliance audits of State governments or State governmental entities and their subgrantees receiving Federal financial assistance; local governments of local government, local governmental entities and subgrantees; and nonprofit organizations of the organization, its entities and subgrantees. The term "financial and compliance audit" is broadly defined in Section 202(1) and includes not only a review of a recipient's financial operations, but a determination of a recipient's compliance with "significant compliance requirements contained in laws and regulations that can materially affect the entities' financial operations, conditions and reports." This definition suggests that reviews to ensure compliance with nondiscrimination requirements would be part of the financial and compliance audits to be conducted by State and local governments. We are very much concerned with this apparent shift of civil rights enforcement responsibility from the Federal government to State and local governments. While we believe that State and local governments must play a significant role in civil rights enforcement, we are not convinced that in all cases State and local governments are currently prepared to carry out these responsibilities without considerable Federal involvement. There is some evidence to suggest that State agencies with civil rights responsibilities lack the necessary resources to effectively enforce Federal antidiscrimination requirements. Moreover, most State agencies' enforcement efforts tend to rely on individual complaints processing rather than on the systemic compliance reviews that have been found effective in identifying discriminatory patterns and practices.[3] We, therefore, believe that civil rights compliance audits conducted by State and local governments and nonprofit organizations should be subjected to review by the appropriate Federal agencies. Civil rights compliance audits should remain ultimately the responsibility of the Federal government.

Section 204(c)(1) of S. 45 specifies that Federal agencies shall rely on financial and compliance audits conducted by State or local governments if these meet auditing standards and other requirements established by OMB. Although nonprofit organizations are responsible for conducting similar audits, it is unclear whether Federal agencies are to rely on these audits as well, since nonprofit organizations are not included in section 204(c)(1). Because the purpose of this Title is to standardize procedures and minimize duplication, it would appear consistent for Federal agencies to accept financial audits conducted by non-nonprofit organizations, provided these meet OMB-established requirements.

Section 204(c)(2) of S. 45 assigns responsibility to the Federal government for conducting other than financial and compliance audits. No mention is made of the type or frequency of Federal government audits. As indicated earlier, it should be made clear that compliance audits of nondiscrimination provisions will remain the responsibility of the Federal government. Also, there is no provision for coordinating the conduct of the various types of audits or for relating the results of financial and compliance audits to audits conducted by the Federal government. Absent some type of coordination, it will be difficult to determine whether recipients of financial assistance are in full compliance with Federal requirements.

---

[3] Center for National Policy Review, State Agencies and Their Role in Federal Civil Rights Enforcement (1977), pp. 47-49,51; Educational Policy Research Center, SRI International, Finding the Common Denominator: The Capacity of State Agencies to Assist the HEW Office for Civil Rights (1979), pp. 16, 24-25.

Section 204(d) of S. 45 provides that OMB shall establish and approve a "quality review process" to ensure the proper conduct of audits. Federal, State or local government audits approved under this "quality review process" are to be accepted by all Federal agencies. This provision makes no reference to audits conducted by nonprofit organizations. If audits conducted by nonprofit organizations are subject to the quality review process, it should be so indicated. If they are not subject to it, this section should be amended to indicate the review and approval procedures audits conducted by nonprofit organizations will undergo.

TITLE III--INTEGRATED GRANT DEVELOPMENT

This title provides for joint funding of projects. Two of its provisions are problematic.

Section 304(a) of S. 45 provides that the President may require Federal agencies to adopt procedures to ensure that applicants for assistance under jointly funded projects are consulted. Agencies should be required to seek the views of prospective beneficiaries as well. One of the major recurring criticisms leveled at Federal assistance programs is that they often do not provide services and benefits to the intended beneficiaries. A similar recurring criticism is that programs are not properly designed to meet actual needs. Establishing a mechanism for beneficiary involvement can result in more relevant programs directed to those most in need.

Section 308 of S. 45 permits a Federal agency head, with the approval of the President, to delegate to another Federal agency head "any power or function relating to the supervision or administration of Federal assistance for projects or classes of projects funded under this title." No mechanism is established whereby the delegating agency can ensure that the delegated function or power is properly carried out. Thus, it will be difficult for the Federal agency making the delegation to carry out its responsibility for assuring the proper and efficient management of its projects.

TITLE IV--ADMINISTRATION OF GENERALLY APPLICABLE FEDERAL ASSISTANCE REQUIREMENTS

This title establishes procedures for standardizing, improving, and coordinating the administration of national policy requirements that are generally applicable to Federal assistance programs, including nondiscrimination requirements.

We have long recognized the need for such standardization and coordination. In our 1977 report, The Federal Civil Rights Enforcement Effort--To Eliminate Employment Discrimination,[4] we evaluated the activities of most Federal agencies having major responsibility for ensuring equal employment opportunity. We concluded that the Federal effort to end employment discrimination was fundamentally inadequate, partly as a result of inconsistent policies and standards and the diffusion of enforcement responsibility among a number of agencies. We recommended the consolidation of all Federal equal employment enforcement responsibilities in one agency, which would apply one standard of compliance. In another report,

---

[4] U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort -- To Eliminate Employment Discrimination - A Sequel (1977).

The Federal Civil Rights Enforcement Effort--To Extend Federal Financial Assistance,[5] we evaluated several Federal agencies with responsibilities for ensuring nondiscrimination in Federally-assisted programs covered by Title VI of the Civil Rights Act of 1964. We found Title VI enforcement to be inadequate and ineffective due, in part, to the lack of standards and procedures for implementing the law and the absence of coordination and direction in this area.[6]

We have, therefore, supported recent steps to assign leadership and coordinating authority for nondiscrimination in employment to the Equal Employment Opportunity Commission and to increase the authority of the Department of Justice to coordinate Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and other nondiscrimination provisions. We will continue to support efforts to clarify, standardize and coordinate generally applicable requirements designed to strengthen civil rights enforcement. We will vigorously oppose, however, any such efforts that would eliminate or weaken enforcement of nondiscrimination in Federal financial assistance programs.

A number of specific provisions in Title IV give us concern. Section 703(a) grants the President authority to designate a Federal agency to coordinate the preparation of national policy assistance standards for one or more generally applicable requirements. These designations are to be made "consistent with any applicable law, including reorganization plans." In our view, this provision does not adequately ensure continuation of and support for existing authorities to coordinate implementation of certain nondiscrimination requirements. These include the authorities assigned to the Department of Justice under Executive Order 12250, the Equal Employment Opportunity Commission under Executive Order 12067, and the Department of Housing and Urban Development under Executive Order 12259. Elimination of the leadership and coordination role of these agencies can only result in further delaying effective enforcement of key civil rights requirements.

---

[5] U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort -- To Extend Federal Financial Assistance (1975).

[6] More recently, the General Accounting Office found that some Federal agencies were still confused about Title VI coverage and that others were still not assuring Title VI compliance in their programs. U.S., General Accounting Office, Agencies When Providing Federal Financial Assistance Should Ensure Compliance With Title VI (1980) p.i.

Section 704(e) of S. 45 provides that no national policy assistance standards shall be developed which in any way diminish or detract from any legal requirement contained in generally applicable requirements, particularly those prohibiting discrimination on the basis of race, religion, sex, national origin, or handicap. The Commission fully supports this provision. Nevertheless, we are concerned that prohibitions against discrimination based on age are not included. The Age Discrimination Act of 1975 prohibits unreasonable discrimination on the basis of age in programs or activities receiving Federal financial assistance. In our 1977 Age Discrimination Study, we found that "barriers have been erected by public and private administrators between persons falling within particular age groups--especially children and older persons--and services which are financed in whole or in part by the Federal government."[7] We also found that all such barriers constituted unreasonable discrimination on the basis of age. We strongly urge the inclusion of prohibitions against discrimination based on age in this section.

---

[7] U.S. Commission on Civil Rights, The Age Discrimination Study (1977), p. III.

Section 705(b) of S. 45 authorizes the head of Federal agencies providing assistance to certify and accept State or local government reporting requirements, regulations, directives, standards, and compliance monitoring and enforcement procedures if these are determined to contain the same requirements as national policy assistance standards and if the requirements are being fully complied with. We have a number of major concerns with this provision. Certification would presumably apply to all national policy standards, including antidiscrimination standards. This certification provision is overly broad and thus can easily be construed as an abdication of Federal civil rights enforcement responsibility. In addition, no criteria are established, other than comparability with Federal requirements, for making certification determinations. Furthermore, once certifications of State and local requirements are made and accepted, there is no requirement that mechanisms be established for Federal agencies to monitor State or local enforcement of those requirements on a continuous basis. Finally, no provision is made to provide funds to State and local agencies to assist in carrying out added enforcement responsibilities.

Recent experience has shown that even limited attempts by a number of Federal agencies, including the Office of Revenue Sharing at the Department of the Treasury, the Law Enforcement Assistance Administration, and the Department of Housing and Urban Development, to defer complaints of discrimination in Federal assistance programs to State agencies have bad serious problems. Among the primary reasons cited for the lack of success are the differences between State laws and enforcement procedures and Federal statutes and standards, the failure of Federal agencies to determine the authority and capability of State agencies to handle discrimination complaints prior to deferring such complaints, and the lack of adequate resources for State agencies to process complaints.[8] Similar problems are likely to occur in the much broader certification of State and local requirements and procedures provided for in this section. We, therefore recommend that, as a minimum, criteria be established to assure careful review of the nondiscrimination requirements and procedures of State and local governments and that certifications be made only if they provide for effective monitoring and enforcement. Also, it should be specified that Federal agencies must establish mechanisms for their monitoring of compliance with national policy standards, even in cases where certifications of State and local requirements have been made.

Section 707(b)(1) and (2) of S. 45 provides that the President, the Director of the Office of Management and Budget, or the head of a Federal agency "may establish a uniform procedure for the development, implementation, and evaluation of national policy assistance standards...and review the administration of generally applicable requirements to improve the effectiveness of such requirements." The establishment of uniform procedures for developing national policy assistance standards and the review of national policy requirements are necessary and should be required if in fact consistency across agencies is to be achieved. Moreover, the information generated by both procedures can be invaluable in making informed policy decisions.

---

[8] State Agencies and Their Role in Federal Civil Rights Enforcement; Finding the Common Denominator: The Capacity of State Agencies to Assist the HEW Office for Civil Rights, supra, note 3.

TITLE V--MISCELLANEOUS

Section 207(a) and (b) of S. 45 directs the United States Advisory Commission on Intergovernmental Relations to conduct a study of alternative approaches to delivering public services financed by grants-in-aid. A report is to be transmitted to the President and the Congress by September 30, 1981. The deadline for the completion of this study should be extended so as to provide sufficient time for the Advisory Commission to conduct a comprehensive study, including seeking the views of recipients and beneficiaries of Federal financial assistance.

an organization of research universities

COUNCIL ON GOVERNMENTAL RELAT
Eleven Dupont Circle, N.W., Suite 480
Washington, D.C. 20036
(202) 861-2595

BOARD OF MANAGEMENT

JOSEPH S. WARNER, CHAIRMAN
Yale University

LESTER H. BURYN
University of Alabama in Birmingham

RAYMOND J. CLARK
Princeton University

STUART H. COWEN
Massachusetts Institute of Technology

HERBERT R. DUNHAM
University of Colorado

GENE A. FRICK
Purdue University

GEORGE R. HOLCOMB
University of North Carolina at Chapel Hill

MARGERY E. HOPPIN
The University of Iowa

V. WAYNE KENNEDY
University of California at San Diego

REUBEN H. LORENZ
University of Wisconsin System

CORNELIUS J. PINGS
California Institute of Technology

ROBERT B. PRICE
The University of Texas Health Sciences Center At San Antonio

FRANKLIN G. RIDDLE
Stanford University

KENNETH W. SLOAN
The Ohio State University

THOMAS E. STELSON
Georgia Institute of Technology

WINIFRED R. WIDMER
State University of New York

WILLIAM M. WILKINSON
The University of Rochester

EXECUTIVE DIRECTOR
MILTON GOLDBERG

ASSISTANT EXECUTIVE DIRECTOR
GEORGE BUSH

April 27, 1981

Senator Dave Durenberger
Subcommittee on Intergovernmental
Relations
United States Senate
Washington, D.C. 20510

Dear Senator Durenberger:

Thank you for the opportunity to comment on the Federal Assistance Improvement Act, S-807. Our comments consolidate the views of many of our institutional representatives who have followed the federal assistance reform legislation for the past four years.

The Council on Governmental Relations is an organization of more than 120 leading research universities established to provide advice and information and to make recommendations to the federal government with regard to policies, regulations, and practices which affect university research. Members of the Council receive more than 90 percent of the federal funds awarded by grants and contracts to colleges and universities for academic science and other scholarly activities.

We note that the bill is based on work done by the Advisory Commission on Intergovernmental Relations. As such, the thrust of the legislation is directed at improving assistance mechanisms for state and local governments. We are aware of the good work and excellent reputation enjoyed by the Advisory Commission, but because of its orientation, the Commission has not addressed the problems of research universities. For that reason, we would appreciate having our remarks made part of the official record on S-807.

Both Title II and Title III will affect universities as assistance recipients and performers. Our comments follow:

Title II - Financial Management and Audit

Section 203 calls for the Office of Management and Budget to develop and maintain for use by all agencies, standard accounting, auditing and financial management policies for all kinds of government agreements, including procurement contracts. We support this concept as long as it recognizes that uniformity should not be an end in itself,

National Association of College and University Business Officers

but must be considered in light of the nature of the recipient. Universities, whose principal functions are the discovery and dissemination of new knowledge, are different from state and local governments, which exercise political authority within their jurisdictions. Therefore, the kinds of projects which each performs as a federal grantee or contractor, are necessarily different. For example, it is the nation's universities which perform most fundamental research projects, while state or local governmental units receive far more federal construction grants than do universities. Similarly, the organization of these two different classes of federal assistance recipients is necessarily different, to permit performance under the different conditions just described.

Therefore, while the administrative, financial management, and/or audit standards which the federal government requires its grantees or contractors to meet, should be reasonably consistent among classes of recipients, they cannot be identical in all respects. For example, the mutuality of interests between federal agencies and state and local governments prompted Congress to pass legislation such as the Demonstration Cities and Metropolitan Development Act of 1966 and the Intergovernmental Cooperation Act of 1968. OMB developed Circular A-95 to provide guidance to federal agencies for cooperation with state and local governments in the coordination of federally assisted programs. On the other hand, OMB promulgated Circular A-101 to provide uniform policies and requirements with respect to research projects conducted under federal grants or contracts by colleges and universities. This Circular does not apply to state and local governments.

Among other things, the Intergovernmental Cooperation Act exempts states from accountability to the federal government for interest or investment income attributable to grants-in-aid, but there is no comparable exemption for universities. This and other differences are recognized in the related, but different uniform administrative requirements which OMB has established to govern grants-in-aid to state and local governments (OMB Circular A-102) and grants and other agreements with institutions of higher education, hospitals and other nonprofit organizations (OMB Circular A-110).

Similarly, while the federal cost principles applicable to various categories of recipients have similar provisions as to the allowability of comparable costs, there are differences necessitated either by differences in the organizations themselves or in the types of projects they conduct.

For example, the provisions of OMB Circular A-21 governing compensation for personal services at universities distinguish between work performed by faculty members during and outside the academic year while comparable cost principles for state and local governments (OMB Circular A-87) and nonprofit organizations (OMB Circular A-122) do not. Similarly, the cost principles for state and local governments contain provisions which are unique to such governmental units, but do not apply to universities or other types of organization.

We are concerned that the language of Section 203 might cause consolidation of the university circulars with those of state and local governments; or worse, prompt new uniform rules which consolidate requirements for both state and local grantees and universities under the same umbrella. If this were to happen, universities would be required to adopt expensive new systems to comply, systems that would lessen or remove entirely the flexibility now essential to meet our educational mission. Our aim here is to assure that the legislation not be narrowly interpreted so as to require a single regulation for all classes of grantees.

Title III - Administration of Generally Applicable Federal Assistance Requirements

This title would seek to simplify and standardize generally applicable assistance requirements so that the administrative and paperwork burden will be reduced.

We applaud the single federal agency concept which would be legislated by Sections 703 and 704. The establishment of designated lead agencies for managing the federal interest in various selected areas was recommended both in the December 14, 1976 Report of the Interagency Task Force on Higher Education Burden Reduction (Recommendations 16 and 17) and in the April 29, 1977 Report of the Commission on Federal Paperwork concerning paperwork burdens imposed on the education community (Recommendations 10 and 21). The establishment of guidance agencies to administer government-wide adherence to generally applicable "cross-cutting" requirements was also a key part of the OMB Circular proposed in the Federal Register (45 FR 74416) of November 7, 1980. That proposed Circular was strongly endorsed by COGR.

The language of Section 702 which contains the definition of the term "national policy assistance standard" is particularly important, because it contains guidance that says standards should be developed "...in a manner which is to the greatest extent feasible and substantially uniform among affected assistance programs and is designed to take into account characteristics of classes of recipients or types of assistance.

We ask that the record reflect our concerns so that the regulations resulting from this legislation be as constructive as possible.

Sincerely,

Milton Goldberg

Milton Goldberg

cc: Tom Hadd, OMB
John Lordan, OMB

ILLINOIS GENERAL ASSEMBLY
STATEMENT BEFORE THE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
April 21, 1981

GOOD AFTERNOON, MR. CHAIRMAN, SENATORS. MY NAME IS GEORGE RYAN AND I HAVE THE DISTINCT HONOR TO SERVE THE STATE OF ILLINOIS IN ITS HOUSE OF REPRESENTATIVES, WHERE I AM SPEAKER.

I WHOLEHEARTILY SUPPORT THE SUBCOMMITTEE IN ITS EFFORTS TO RENEW A MUCH NEEDED DEBATE ON THE MANAGEMENT OF FEDERAL ASSISTANCE. I WOULD LIKE TO EXPRESS MY THANKS TO YOU, MR. CHAIRMAN, FOR YOUR LEADERSHIP ON THESE MATTERS WHICH ARE TRULY A NATIONAL CONCERN, AND ALSO THANK YOU FOR ALLOWING ME TO PRESENT SOME REMARKS AND COMMENTS FOR CONSIDERATION ON THE LEGISLATION BEFORE THE SUBCOMMITTEE. I WOULD LIKE TO FOCUS ON TWO THINGS: (1) FEDERAL MANAGEMENT EFFORTS AND (2) PROPOSED CONSOLIDATIONS OF FEDERAL PROGRAMS.

I. THE FEDERAL GOVERNMENT AS A RESPONSIBLE PARTNER

MR. CHAIRMAN, I AM CONCERNED THAT THE FEDERAL EXECUTIVE HAS NOT BEEN A RESPONSIBLE PARTNER IN THE PROCESS OF GOVERNMENT. IT WOULD APPEAR THAT TOO OFTEN THE STATUTES DESIGNED TO REFORM THE FEDERAL GOVERNMENT THAT HAVE PASSED THROUGH THIS COMMITTEE HAVE BEEN IGNORED BY THE FEDERAL EXECUTIVE, OR WORSE YET, HAVE BEEN USED TO REGULATE NON-FEDERAL PARTIES. INCLUDED IN THIS LITANY OF FEDERAL REFORM LEGISLATION HAS BEEN THE INTERGOVERNMENTAL COOPERATION ACT OF 1968, THE CONGRESSIONAL BUDGET ACT, THE FEDERAL PROGRAM INFORMATION ACT, THE FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT, AND MOST RECENTLY, THE RED TAPE AND PAPERWORK REDUCTION ACT OF 1980. MOST OF THESE WELL INTENTIONED FEDERAL LAWS HAVE, IN MY OPINION, SUFFERED VARIOUS DEGREES OF FAILURE. FAILURE IS TRAGIC UNDER ANY CIRCUMSTANCES. HOWEVER, MR. CHAIRMAN, FROM THE STANDPOINT OF STATE AND LOCAL GOVERNMENTS -- WHICH HAVE LARGE SEGMENTS OF THEIR DESTINY CONTROLLED BY THE FEDERAL GOVERNMENT -- ANY FAILURE AT THE FEDERAL LEVEL RESULTS IN ACUTE, AND MANY TIMES, UNCONTROLLABLE HARDSHIPS. ONE SUCH EXAMPLE IS THE INTERGOVERNMENTAL COOPERATION ACT OF 1968.

THE HOUSE REPORT FILED FOR THE INTERGOVERNMENTAL COOPERATION ACT OF 1968 SUMMARIZED TITLE IV OF THE BILL AS - AND I QUOTE - "DESIGNED TO PROVIDE COORDINATION ON THE FEDERAL LEVEL." THE SECTION-BY-SECTION ANALYSIS ALSO STATES THAT " THE PRESIDENT IS GIVEN THE DISCRETION TO ESTABLISH RULES AND REGULATIONS TO BE FOLLOWED BY FEDERAL AGENCIES". WHAT COORDINATION ON THE FEDERAL LEVEL HAVE WE SEEN AS A RESULT OF TITLE IV? FOR ONE THING, WE AT THE STATE AND LOCAL LEVEL HAVE BEEN "BLESSED" WITH THE A-95 REPORTING PROCESS. IN TESTIMONY BEFORE THIS SUBCOMMITTEE, THE NATIONAL ASSOCIATION OF COUNTIES HAS ALREADY NOTED THAT OMB CIRCULAR A-95, WHICH IS PROMULGATED CITING TITLE IV AS ITS AUTHORITY, TOPS THE LIST OF BURDENSOME ADMINISTRATIVE REQUIREMENTS. MR. CHAIRMAN, THE A-95 PROCESS DOES NOT FULFILL THE INTENT OF TITLE IV. INSTEAD, TITLE IV HAS BEEN USED TO REGULATE APPLICANTS WHILE FEDERAL AGENCIES GENERALLY IGNORE PROVISIONS REQUIRING ACTION AND AWARD NOTIFICATIONS. IN FACT, NOT UNTIL THE RECENT EFFORTS BY OMB UNDER THE FEDERAL ASSISTANCE AWARD DATA SYSTEM (FAADS) HAS THERE BEEN ANY FEDERAL LEVEL, COORDINATED CAPABILITY FOR A FEDERAL AGENCY TO KNOW WHAT OTHER FEDERAL AGENCIES ARE ACTUALLY DOING. IN THE ALMOST 13 YEARS SINCE PASSAGE, THE FEDERAL EXECUTIVE HAS IGNORED THE COMMON SENSE INTENTS OF THAT ACT.

MR. CHAIRMAN, AS ANOTHER EXAMPLE OF AN UNCOOPERATIVE AND UNCONTROLLED GOVERNMENT, THE FEDERAL EXECUTIVE CONTINUES TO SEND CHECKS NOT TO THE RIGHTFUL FIDUCIARY ORGANIZATION OF THE STATE GOVERNMENT BUT TO STATE DIVISION MANAGERS, IN THEIR NAME APPARENTLY, AND WITHOUT ANY INDICATION OF THE CONTRACT, GRANT AGREEMENT, OR PURPOSE. THE ACCOUNTABILITY TRAIL OVER THESE FUNDS, AN ACCOUNTABILITY THE LEGISLATURE ATTEMPTS TO OVERSEE IN ITS OWN INTEREST IN PROTECTING THE FISCAL AFFAIRS OF THE STATE, CAN BE LOST LONG BEFORE THE FUNDS REACH OUR DULY RESPONSIBLE OFFICIALS. AT THE SAME TIME, OVER $100 BILLION DOLLARS IN DEBIS ARE GOING UNCOLLECTED BY THE FEDERAL GOVERNMENT AND 40% OF THE FEDERAL ACCOUNTING SYSTEMS HAVE NOT BEEN APPROVED BY THE GENERAL ACCOUNTING OFFICE. I AM NOT CONVINCED THAT THE FEDERAL GOVERNMENT CAN REALLY TELL YOU WHO THEY SEND OUR MONEY TO, WHEN THEY DID IT, AND FOR WHAT PURPOSE. THE FEDERALISM SYSTEM MIGHT WORK, MR. CHAIRMAN, IF THE NATIONAL GOVERNMENT WOULD SPEND LESS TIME WORRYING ABOUT US AT THE STATE AND LOCAL LEVEL AND MORE TIME GETTING ITS HOUSE IN ORDER.

THE NATIONAL GOVERNMENT CAN REDUCE THE COMPLEXITY AND PRESCRIPTION IN SOME FUNCTIONAL AREAS. IT CLEARLY SHOULD. NO GOVERNMENT IN THE 1980'S WILL ENJOY THE PATIENCE OF ITS ELECTORATE OR THE FISCAL CAPACITIES WITH WHICH TO CUSHION MISMANAGEMENT AND BUREAUCRATIC COMPETITION. PROVISIONS IN THE NEW REFORM LEGISLATION WHICH ADDRESS THE CROSSCUTTING FEDERAL REQUIREMENTS AND PROCEDURES FOR DEALING WITH CONSOLIDATION LEGISLATION DESERVE PRAISE. THEY WILL PROVIDE THE MEANS THROUGH WHICH THE NATIONAL GOVERNMENT CAN ACT TO REDUCE SOME OF THE COMPLEXITY. THE SINGLE AUDIT PROVISIONS, AS THEY RELATE TO CONTROLLING THE PROLIFERATION AND SINGULARITY OF FEDERAL AUDIT PRACTICES, IS ANOTHER GOOD EXAMPLE OF FEDERAL LEVEL ACTION TO MANAGE ITS OWN AFFAIRS. I ALSO VIEW THE STATE POWERS AMENDMENT, WHICH IS FOUND BOTH IN S.45 AND THE ROTH BILL, AS A CLEAR STATEMENT TO THE FEDERAL EXECUTIVE AND TO THE COURTS THAT NON-STATUTORY ADMINISTRATIVE DESIRES OF THE FEDERAL AGENCIES ARE WITHOUT SUPREMACY OVER STATE LAW AND PRACTICE. I THINK THAT THIS AMENDMENT ONLY RECOGNIZES THE FACT THAT THE FEDERAL EXECUTIVE HAS LITTLE BASIS FOR TELLING NON-FEDERAL GOVERNMENTS AND PARTIES HOW TO DO THINGS.

IN THIS LIGHT, LET ME SHARE WITH YOU A FEW OBSERVATIONS WHICH I HOPE ARE CONSTRUCTIVE TO THE SUBCOMMITTEE'S EFFORTS:

CONSOLIDATION PROCEDURES

CONSOLIDATIONS SHOULD NOT BE VIEWED SOLELY AS FISCAL REMEDIES FOR THE NATIONAL GOVERNMENT. I AM CONCERNED THAT THE CONSOLIDATION PROCEDURES AS SET OUT IN THE PROPOSED LEGISLATION MAY NOT PROVIDE, IN ALL CASES, ENOUGH TIME TO CONSIDER ALL THE SERIOUS FISCAL AND POLITICAL RAMIFICATIONS WHICH MAY BE INVOLVED. AS PUBLIC SERVICE DELIVERERS, STATE GOVERNMENTS, AND OTHERS, HAVE ENTERED INTO GOOD FAITH AND OFTEN LONG STANDING RELATIONSHIPS WITH THE FEDERAL GOVERNMENT. THESE SERVICE CONTRACTS ARE OPEN-ENDED FOR THE FEDERAL GOVERNMENT WHILE THEY ARE NOT NEGOTIABLE TO US. THE COURTS HAVE CLEARLY SET OUT THAT WE EITHER ACCEPT THE FEDERAL FUNDING OFFER, HOWEVER WRITTEN, AND ANY NEW COVENANTS AFTER THAT ACCEPTANCE, OR WE LOSE THE AID FOR OUR CITIZENS. RADICAL CHANGE IN THESE POLICIES, WHILE NECESSARY TO THE OVERALL LONG-TERM HEALTH OF OUR NATION'S ECONOMY, COULD RESULT IN SIGNIFICANT NEAR-TERM HARDSHIPS TO STATE AND LOCAL GOVERNMENTS. I WOULD ASK THIS COMMITTEE TO STUDY MEANS TO ENSURE THAT STATE AND LOCAL GOVERNMENTS ARE GIVEN AN ADEQUATE OPPORTUNITY TO PRESENT THEIR VIEWS DURING THE CONSOLIDATION PROCESS.

SINGLE AUDIT

THE FEDERAL EXECUTIVE PROBABLY HAS EXISTING AUTHORITY TO MAKE FEDERAL AUDITORS LOOK BEFORE THEY LEAP INTO OTHER GOVERNMENTS' BOOKS, AND TO MAKE THEM LOOK FOR ALL FEDERAL FUNDING WHEN THEY GET THERE. THE SINGLE AUDIT CONCEPT, THOUGH, REQUIRES AUDITORS TO IDENTIFY ALL PASSTHROUGH FUNDING IF IT IS TO WORK PROPERLY. I DO NOT THINK THAT SUCH PASSTHROUGH ARRANGEMENTS ARE WELL-UNDERSTOOD AND I AM CONCERNED THAT THIS TITLE MIGHT AUTHORIZE FEDERAL PRESCRIPTION OF NON-FEDERAL ACCOUNTING AND REPORTING SYSTEMS. THE COMMITTEE SHOULD RECOGNIZE THAT IT IS CREATING NEW EXECUTIVE POWERS RELATED TO THE ACTIONS OF STATE GOVERNMENT. LET ME SUGGEST, IN SECTION 203 OF S. 45, THE WORDS "FOR USE BY FEDERAL AGENCIES" BE CHANGED TO "FOR USE WITHIN FEDERAL AGENCIES" SO THAT IT IS CLEAR TO THE PEOPLE IN WASHINGTON THAT IT APPLIES TO WASHINGTON AND NOT TO STATE AND LOCAL GOVERNMENTS. I AM ALSO CONCERNED THAT NOTHING IN TITLE II BE CONSTRUED AS LIMITING OR PREEMPTING THE AUTHORITY OF A STATE TO MAKE AUDITS UNDER ITS LAWS.

OMB REGULATORY POWERS

NOT LESS THAN SEVEN SECTIONS IN THE BILLS EMPOWER OMB TO ISSUE REGULATIONS. MR. CHAIRMAN, HISTORICALLY THIS AGENCY HAS NOT BEEN RELUCTANT TO USE ITS REAL OR PERCEIVED REGULATORY AUTHORITY ON STATE AND LOCAL GOVERNMENTS. IN FACT, OMB SEEMINGLY VIEWS ALL SUCH AUTHORITIES AS A CARTE BLANCHE RIGHT TO REGULATE STATE AND LOCAL GOVERNMENTS. THESE SAME GOVERNMENTS HAVE NO RIGHT OR RECOURSE AGAINST OMB DIRECTIVES; DIRECTIVES WHICH HAVE NEVER BEEN ISSUED UNDER THE ADMINISTRATIVE PROCEDURES ACT AND CAN NOT BE FOUND CODIFIED ANYWHERE. MR. CHAIRMAN, UNDER SUCH CIRCUMSTANCES WE ARE IN THE SAME SITUATION AS DAVID WAS WITH GOLIATH -- EXCEPT THAT THIS GOLIATH HAS THE PHILLISTINES AND THE SLINGSHOT.

A SECOND THOUGHT ON REGULATORY POWERS. WE HEAR MUCH TODAY ABOUT THE COST OF REGULATIONS ON OUR PRIVATE SECTOR. MR. CHAIRMAN, IT WOULD APPEAR ALMOST TRITE TO SAY THAT REGULATION ALSO AFFECTS GOVERNMENT AFFAIRS. WHILE IT MAY BE TRITE - IT MUST BE SAID OVER AND OVER AGAIN UNTIL WE CONVINCE OURSELVES THAT WE HAVE COME TO GRIPS WITH THIS HIDDEN AND EXPENSIVE COST OF GOVERNMENT. BROAD DELEGATIONS OF REGULATORY AUTHORITY SHOULD BE REVIEWED WITH SKEPTICISM.

I WOULD ASK THE COMMITTEE TO REVIEW THE PROVISIONS WITH THESE CONCERNS IN MIND AND THEN TO STRENGTHEN OR ENSURE PROPER STAFFING FOR THOSE PROVISIONS WHICH CAUSE ACTION ON THE FEDERAL LEVEL. THIS ADMINISTRATION, I AM CONFIDENT, WILL USE SUCH LEGITIMATE POWERS WISELY.

INTEGRATED PLAN ASSISTANCE

THE PROPOSED ROTH BILL WOULD ALLOW APPLICATIONS FOR ASSISTANCE TO PLAN TRANSFERS OF FUNDS UP TO CERTAIN AMOUNTS BETWEEN RELATED PROGRAMS. THE PROVISIONS SET OUT PRESCRIBED ROLES FOR THE CHIEF EXECUTIVE OFFICER OF AN APPLICANT AND CALL FOR A SINGLE ORGANIZATIONAL UNIT. THESE PROVISIONS SEEM TO BE IN CONFLICT WITH THE STATE POWERS AMENDMENT OF THE SAME BILL. SUCH PRESCRIPTION IS PROBABLY UNNECESSARY AS MOST STATE AND LOCAL GOVERNMENTS HAVE BYLAWS, LAWS, AND PRACTICES SETTING OUT AUTHORIZED POWERS AND ESTABLISHING LEGAL PROTECTIONS, WHILE ACCOUNTING TECHNIQUES PROVIDE FUND CONTROL OVER LEGAL EXPENDITURES REGARDLESS WHERE PEOPLE MAY BE LOCATED PHYSICALLY OR ORGANIZATIONALLY. IT IS ALSO CLEAR TO ME THAT INTEGRATED PLANS SHOULD NOT BE

WRITTEN AND SUBMITTED SOLELY BY THE GOVERNOR OF A STATE AS THIS COULD CIRCUMVENT THE LEGISLATIVE BRANCH'S ABILITY TO SET POLICIES. IF THE COMMITTEE HAS OTHER INTERESTS WHICH WOULD OVERRULE THE STATE POWERS AMENDMENT, THEN IT SHOULD NOT REMAIN SILENT IN ITS REPORT OR IN THE STATUTE. I WOULD ALSO ENCOURAGE THE SUBCOMMITTEE TO SPECIFY AS MUCH AS POSSIBLE THE ACTIONS WHICH ARE REQUIRED OF FEDERAL AGENCIES, OR FOR THAT MATTER PRECLUDED, AND NOT LEAVE THESE CRITERIA UP TO OMB TO ESTABLISH. THESE PROVISIONS WILL BE INEFFECTIVE IF THE FEDERAL EXECUTIVE IS NOT RESPONSIVE. I WOULD SUGGEST THAT FEDERAL AGENCY APPROVAL BE REQUIRED, UNLESS THE FEDERAL AGENCY HEAD CAN SHOW SUBSTANTIAL EVIDENCE THAT THE STATUTORY OBJECTIVES WOULD BE IRREPARABLY ENDANGERED. THE EVIDENTIARY BURDEN SHOULD BE PLACED ON THE FEDERAL AGENCY HEAD AND IT SHOULD BE STATUTORILY BASED RATHER THAN "PROGRAM" BASED IN ORDER TO ENSURE THAT RULINGS ARE NOT FOUNDED ON THE AGENCY'S OWN REGULATIONS.

STATE POWERS AMENDMENT

S.45 WOULD CREATE A NEW SECTION 208 TO THE INTERGOVERNMENTAL COOPERATION ACT OF 1968. I AM ENCOURAGED BY THE SINGULAR ATTENTION GIVEN TO STATE LEGISLATURES IN THIS PROVISION. HOWEVER, THE VERSION OF THE ROTH BILL WHICH SPEAKS TO STATE GOVERNMENT POWERS, RATHER THAN THE POWERS OF ONE BRANCH OF STATE GOVERNMENT, IS MUCH MORE POWERFUL AND MORE APPROPRIATE. IN CONTRAST, LINES 7 - 10 ON PAGE 50, IN S.45, ARE MORE DIMINISHING IN EFFECT THAN HELPFUL. I AM OF THE STRONG OPINION THAT NO STATE LEGISLATURE POWERS ARE EXERCISED PURSUANT TO ANY FEDERAL STATUTE NOW, AND THAT THE FEDERAL GOVERNMENT SHOULD NOT SUPPOSE TO INTERJECT ITSELF INTO THE BUSINESS OF DEFINING STATE LEGISLATURE POWERS, ESPECIALLY AS IT ATTEMPTS TO LIST THEM AS DONE IN THE NEW SECTION 208. IN FACT, I DON'T SEE WHY THE FEDERAL GOVERNMENT HAS ANY BUSINESS TELLING STATE GOVERNMENT HOW TO APPROPRIATE THE RECEIPTS IN STATE ACCOUNTS, HOW TO ENABLE THE WORKINGS OF THE STATE GOVERNMENT OR HOW TO MAKE AN APPROVED APPLICATION FOR FEDERAL ASSISTANCE. THE ROTH BILL, I FEEL, PROPERLY ADDRESSES THE INTRUSION OF THE FEDERAL GOVERNMENT INTO THE EXERCISE OF LEGITIMATE STATE POWERS REGARDING NEGOTIATION WITH THE FEDERAL GOVERNMENT FOR FEDERAL ASSISTANCE.

II. THE PRESIDENT'S BLOCK GRANT PROPOSALS

MR. CHAIRMAN, EARLIER STATEMENTS FOR THIS HEARING RECORD HAVE TAKEN TIME TO ADDRESS THE CONSOLIDATION OR BLOCK GRANT PROPOSALS OF THE NEW ADMINISTRATION. DISCUSSION IS APPROPRIATE, HERE, NOT ONLY BECAUSE OF THE CONSOLIDATION TITLE IN THE PROPOSED LEGISLATION BUT, MORE IMPORTANTLY, BECAUSE THE COMMITTEE CAN EXERCISE JURISDICTION UNDER THE RULES OF THE SENATE OVER MATTERS WHICH EFFECT THE ORGANIZATION OF THE EXECUTIVE AND OVER GOVERNMENT AFFAIRS, IN GENERAL.

STATE AND LOCAL GOVERNMENTS HAVE STRUGGLED FOR YEARS TO GAIN ACCESS TO THE PROCESS OF FORMULATING FEDERAL ACTIVITIES. TOO OFTEN WE HAVE BEEN TOO LATE TO HELP THE CONGRESS DEAL WITH SUCH BASIC GOVERNMENTAL ISSUES AS: ORGANIZATIONAL REQUIREMENTS FOR SERVICE DELIVERY; ELIGIBILITY AND ALLOCATING FORMULA CONSTRUCTION; THE LENGTH OF AUTHORIZING PERIODS; THE TYPES OF PAYMENT MECHANISMS AND PRACTICES; THE PASSTHROUGH REQUIREMENTS; FEDERAL REGULATORY POWERS; THIRD PARTY RIGHTS; AND SERVICE DELIVERERS' RIGHTS.

MR. CHAIRMAN, THE NEW BLOCK GRANT PROPOSALS ARE SERIOUS PROPOSALS, AND WHILE I AM SUPPORTIVE OF THE PRESIDENT'S EFFORTS, I AM ALSO SERIOUSLY CONCERNED THAT OUR CITIZENS MAY SUFFER WHILE WE PARTNERS IN GOVERNMENT HAGGLE OVER FORMULA INEQUITIES, SINGLE AGENCY DESIGNATIONS, NITPICKING REGULATORY CHANGES, PAYMENT AND REIMBURSEMENT PROCEDURES, AND SO FORTH. I WOULD ASK THE COMMITTEE TO TAKE A SERIOUS LOOK AT EXERCISING SOME FORM OF JURISDICTION OVER THE NEW BLOCK GRANT LEGISLATION SO THAT STATE AND LOCAL GOVERNMENTS, AND OTHERS, MIGHT COME BEFORE YOU AND OFFER CONSTRUCTIVE HELP TO CONGRESS SO THAT PROBLEMS BECOME MINIMIZED BEFORE OUR CITIZENS ARE ASKED TO PAY THE PRICE.

I THANK YOU VERY MUCH FOR THIS OPPORTUNITY TO SPEAK, MR. CHAIRMAN, AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS FOR YOU HERE OR THROUGH STATEMENTS SUBMITTED FOR THE RECORD.

MUNICIPAL FINANCE
OFFICERS ASSOCIATION

April 21, 1981

The Honorable David Durenberger
Chairman
Intergovernmental Relations
  Subcommittee
Committee on Government Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Durenberger:

The Municipal Finance Officers Association would like the Subcommittee on Intergovernmental Relations to consider our comments on grant reform legislation. The Municipal Finance Officers Association (MFOA) represents 9,000 members who are state and local government finance officers, appointed or elected, and public finance specialists.

Two of MFOA's standing committees have examined the grant reform legislation approved by the U.S. Senate in the 96th session. Based on these MFOA discussions, we have developed the following comments. If possible, we would appreciate inclusion of these comments in the hearing record on S.45 and S.807.

MFOA enthusiastically supports efforts to streamline and simplify the grant-in-aid system. As the financial managers for our nation's states, counties, and cities, we must comply with overlapping and duplicative federal requirements on a day-to-day basis. Efforts to reduce red tape and relieve us of excessive administrative burdens also promise to ease the burden on local taxpayers.

The Advisory Commission on Intergovernmental Relations and the General Accounting Office have documented in numerous studies the inconsistencies and inefficiencies inherent in the auditing of federal grant programs. While there has been general agreement amongst federal, state, and local auditors concerning the establishment of single audits -- successful implementation of this concept has not occurred. OMB Circular A-102, Attachment P, and other initiatives over the past 10 to 15 years have been geared toward bringing about the single audit concept. The OMB circulars have not provided the overall direction or leadership which is needed to successfully institute the single audit approach. Inclusion of an audit title in a grant reform bill would indicate that it is the intent of Congress to bring about audit reform. Congressional attention to this matter would also bring about the necessary leadership and direction which has been lacking in the past.

Based on our review of Title II of S.45, we recommend the following technical changes to the legislation.

1. In Section 202(1) there is a definition of financial and compliance audit. Creation of a new "financial and compliance audit" definition is unnecessary since the existing Government Accounting Office definition in Standards for Audit of Governmental Organizations, Programs, Activities and Functions (1981 Revisions), closely parallels the language in Section 202(1). Consistent with the purpose of this proposed legislation and Title II, we should try to avoid unnecessary duplication. We, therefore, suggest substituting the following GAO definition of financial and compliance audits for the language currently in Section 202(1).

> "The term 'financial and compliance audits' means an audit that (a) determines whether the financial statements of an audit entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles and (b) whether the entity has complied with laws and regulations that may have a material affect upon the financial statements."

2. In our efforts to bring about reform of grant auditing, we should be careful not to create new accounting, auditing, or financial reporting requirements for state and local governments. It is important that accounting and financial reporting requirements of the single audit concept are based on Generally Accepted Accounting Principles (GAAP) and auditing is based on Generally Accepted Auditing Standards (GAAS). It should be stated clearly in Title II that Generally Accepted Accounting Principles are those principles established

by the National Council on Governmental Accounting or its successor bodies. This will ensure that GAAP based accounting and financial reporting for state and local governments is followed and that we do not engage in counter-productive efforts by creating opportunities for confusion in the accounting and financial reporting area.

The following language changes would implement this recommendation:

a. In Section 202, on page 17, add a new Subsection 10 to read as follows:

> Section 202(10). The term "Generally Accepted Accounting Principles" means those principles established by the National Council on Governmental Accounting or its successor bodies.

b. Section 203(a) on page 18, line 3, insert the following phrase between "law" and "develop":

> "and where relevant, generally accepted accounting principles"

c. Delete Section 203(2) on page 18, lines 19-21.

d. Section 204(b) on page 21, line 4, delete the phrase "and standards." (This language would then conform to a new Section 202(10).)

3. The definition of "local government" in Section 202(7) on page 17 appears to cover school districts. We believe that the Committee Report should make it clear that school districts are included in this definition.

4. The term "entity" is defined in Section 202(8) on page 17. This definition is vague and could be confusing to the practitioner. We suggest that the Committee report further explain this definition.

5. In Section 204(a) on page 19, there is a requirement that the audit be conducted every two years or, in the case of governments receiving less than $100,000 per year, every five years. It is not clear from this section whether the audit would cover the full period or a one year period. This section should be clarified by indicating that if an audit is performed every two years, the audit should cover the entire period.

6. One of the most important reforms which can be achieved through the implementation of Title II is to "reduce the many, seemingly endless audits of grant recipients." While Title II encourages increased federal reliance on state and local audits, we believe that the language in Section 204(c)(1) on page 21 is inadequate. This language in its present form may not reduce the disruption of state and local grant recipients which has occurred because of multiple audits by numerous federal agencies. We do not object to federal agencies expanding upon financial and compliance audits when a need can be justified; but this should only occur when a clear justification has been presented to OMB. We, therefore, suggest deletion of the language on lines 14-19, p.21, of Section 204(c)(1) and insertion of the following language after the phrase "provided However".

> "That if independent audits arranged by states or local governments meet generally accepted auditing standards and other requirements established pursuant subsection (d), Federal agencies shall rely on those audits and shall only conduct additional audit work after justifying the need for such work to the Office of Management and Budget and any additional audit work shall build upon the work already done.".

7. Section 204(e) on page 22 provides the OMB the opportunity to reimburse state and local governments for independent audit costs related to federal grant programs. The language in the bill is vague and does not indicate that such audit costs will (emphasis added) be reimbursed. We feel that either the language in Section 204(e) or the Committee Report should indicate that all audit costs related to parts of audits performed on behalf of the Federal government will be reimbursed by the Federal government. Clarification of the reimbursement procedure is essential so that state and local auditors have sufficient resources to respond to Federal audit requirements.

On behalf of the Municipal Finance Officers Association, I wish to thank you for providing us with the opportunity to supply these written comments for the hearing record. We stand ready to work with you and the Subcommittee toward the passage of grant reform legislation in the 97th Congress.

Sincerely,

Jeffrey L. Esser
Director
Federal Liaison Center

bcc: Jimmie Powell
Susan Fritschler
John Callahan
Dru Smith
Chris Brewster
Don Beatty
Jim Marling

NACo
National Association of Counties
Offices • 1735 New York Avenue N.W., Washington, D.C. 20006 • Telephone 202/783-5113

M E M O R A N D U M

TO : Members of the Subcommittee on Intergovernmental Relations

FROM : Bernard F. Hillenbrand, Executive Director

SUBJECT : Mark-Up of Grant Reform Legislation

DATE : May 6, 1981

As the Subcommittee is aware, NACo has actively supported efforts to reform and improve the federal aid system. In our testimony before the Subcommittee in March, as well as previous testimonies, NACo has expressed strong supportive views of most elements of S. 45 and now S. 807. We believe the legislation before you provides a sensible and realistic framework in decongesting the federal aid system.

As the Subcommittee marks up the grant reform legislation, NACo urges consideration of our grant reform recommendations.

SINGLE AUDIT

NACo endorses the single audit provisions provided in both S. 45 and S. 807. They provide statutory authority for the single audit concept while concentrating on the financial management control practices of the recipient. In this vein, NACo cannot endorse suggestions by OMB to weaken this section through authorizing rather than requiring single audits.

Further, we are supportive of the $100,000 figure as a threshold for five year/three year audit restrictions. Though we have no specific policy on the issue, the relationship to the $25,000 threshhold as contained in the general revenue sharing program appears to have merit.

Finally, we would encourage strengthened language in Section 204(e) of both bills to spell out the prescriptive means for cost reimbursement of independent auditors.

STANDARDIZATION OF NATIONAL POLICY REQUIREMENTS

This is an area of immense concern to counties. We believe the language used under the definition of National Policy Assistance Standard addresses this problem.

NACo supports the lead agency concept and the certification requirement. We caution that specific care should be taken to ensure that agencies accept the certification of the lead agency without adding any new provisions to the requirement.

JOINT FUNDING

We support joint funding with the increased forceful language contained in Title V of S. 807. In the past, federal agency personnel have refused to accept the procedures or requirements of another as a substitute of their own.

GRANT CONSOLIDATION

NACo believes that the consolidation process provided under S. 45 is not strong enough. We feel the discharge provisions as outlined in S. 807 are absolutely essential and provides Congress with a proper and workable structure in dealing with the many consolidation programs anticipated to be proposed by the Administration.

NACo appreciates the consideration of these recommendations and commends the Subcommittee on their leadership and early consideration of this legislation.

national
association
of regional
councils

1700 K St., N.W., Washington, D.C. 20006 • Area Code (202) 457-0710
RICHARD C. HARTMAN, Executive Director

STATEMENT OF

CHARLES SALEM
Mayor, Goodyear, Arizona;
Member, Maricopa Association of Governments; and
President, National Association of Regional Councils

ON BEHALF OF THE

NATIONAL ASSOCIATION OF REGIONAL COUNCILS

BEFORE THE

SENATE GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

ON

THE FEDERAL ASSISTANCE REFORM ACT OF 1981

March 25, 1981
Washington, D.C.

Mr. Chairman, I am Charles Salem, a member of the Maricopa Association of Governments, Phoenix, Arizona, and President of the National Association of Regional Councils.*

Regional councils try to assist local governments in participating in those federal programs which can best meet pressing local problems. This service is particularly important to smaller jurisdictions that lack the financial and staff resources to pursue federal assistance on their own. By looking at problems from a regional perspective, the council helps local elected officials develop cooperative solutions that benefit the largest possible number of people. In turn, the impact of federal assistance can be magnified.

Councils are also involved in the planning and implementation of federal areawide programs. These include federal programs in economic development, housing, clean air and water, transportation, and aging. NARC members have an intimate working knowledge of federal assistance programs and therefore we view with interest proposals like the one before the Committee today.

---

*The National Association of Regional Councils represents approximately 350 of the nation's 600 regional councils of local governments. Regional councils are public organizations encompassing a regional community and are tied directly to their local governments through local and/or state government actions. The basic responsibility of a regional council is to be an umbrella agency which coordinates regional coordination and management activities. Many regional councils also arrange for the implementation of regional policies.

Consolidation Plans - Reservations

S. 45 would provide a means for the President to submit "consolidation plans" for federal assistance programs that he has determined merit such consolidation. The plans (no more than 3 can be submitted to Congress at one time) must be submitted within the first 60 days of a congressional session and each plan can provide for only one consolidation of two or more programs.

NARC supports giving the President authority to submit to the Congress plans for the consolidation of related federal assistance programs. However, while promotion of better administration is a worthy goal, we must not lose sight of the need to carry out policy objectives intended by Congress. The elimination of program overlap and duplication should take place when it furthers the implementation of national goals. Elimination of duplication should not mean elimination of programs which the Executive Branch dislikes.

Because local governments and their regional councils have fought hard to obtain a meaningful role in programs which affect the vital interests of the communities they represent, we are somewhat concerned about the changes that the consolidation plans could bring. Therefore, we urge some strengthening of the language under Title I. The broad language in the present bill could, in our opinion, be used to make some fundamental changes in the relationships between the federal government, states and local governments, and their regional councils.

NARC does not want to see any legislative mandates for areawide local participation overridden through consolidation plans. As many local governments are acutely aware, some federal agencies would rather not deal at all with the local level.

S. 45 also provides that the specific terms under which a consolidation effort can be administered -- including specifics on state/local match for federal funds, allotment of funds, financial management, planning and eligibility requirements -- must be limited by already specified terms in one or more of the programs being consolidated. We do not think it feasible, for instance, that a requirement under a specific program included in the consolidation -- such as planning -- should apply to activities across the board unless it is relevant and causes an improvement in the administration of the entire block grant program. Absent such a determination, it should apply only to that component.

Standard Policy Requirements

S. 45 also provides authority for the President to designate a single federal agency to establish standard policy requirements on a list of several items. These include labor practices requirements, public employee standards, equal services requirements, access to government information, relocation and real property acquisition requirements, procurement standards, planning requirements, financial and administrative requirements, citizen participation requirements and environmental protection requirements.

NARC agrees with this objective but not the proposed procedure for its implementation.

As we understand, a number of such initiatives are now in progress. The Council on Environmental Quality has promulgated standard regulations for all agencies affected by the National Environmental Policy Act. The Equal Employment Opportunity Commission is presently developing uniform equal employment opportunity requirements and the Office of Management and Budget continues to review federal planning requirements. We understand that OMB also has an ongoing effort with state and local governments to identify cross-cutting requirements for standardization.

Under the initiatives I have just mentioned, affected federal agencies will develop implementing procedures to explain how the standard requirements apply to their particular policies and programs. A similar procedure is outlined under Section 704 of S. 45. NARC believes such a provision will insure a smoother implementation of the standard regulations.

The experience of local governments with the Section 504 Rehabilitation Act requirements promulgated by the Department of Health and Human Services shows the potential difficulties that can develop if a single agency is given sole authority for developing standard regulations. The Section 504 standards mandated equal access to existing and future public facilities for the handicapped. In public transportation this approach has limited merit. Before these regulations, the Urban Mass Transportation Administration within DOT permitted communities to devise programs to provide comparable services to handicapped individuals. But this approach is denied under the new regulations. Instead, existing transit systems must now convert their facilities and equipment to provide full access to the handicapped. The financial implications of these standards for local governments, public transit authorities and other institutions are enormous. In our opinion, this total access approach was preordained by the nature of the HHS standards. We feel that government-wide standards should be flexible to the degree such flexibility does not undermine the policy intent of Congress.

(Let me interject here that we understand that the Reagan Administration is taking a close look at the 504 regulations. NARC supports this effort to give state and local governments more flexibility to deal with such issues.)

NARC supports the designation of the Office of Management and Budget to oversee compliance with the standardization program as provided for in Section 707 of S. 45. We believe there is a strong need for an arbiter in the process particularly if a designated federal agency has not been responsive to the needs of local governments. A designated agency should not become the sole arbiter, but some entity without a single mission (like OMB) orientation should balance all interests involved.

Integrated Grant Development

NARC supports the integrated grant provisions under Title III of S. 45. This title could prove to be very useful to local governments seeking to implement their comprehensive areawide development plans. The difficulty of bending federal grant requirements to meet local priorities has been a source of frustration for local elected officials serving on regional councils. The provisions under this title should prove useful to a number of councils that have had difficulties in reconciling their internal structure with federal program requirements.

In addition, the provisions for uniform technical or administrative requirements for federal agencies (Section 307), which include financial administration, timing of federal payments, and recordkeeping, are applauded.

Thank you.

NATIONAL EDUCATION ASSOCIATION STATEMENT
ON THE FEDERAL ASSISTANCE REFORM ACT

The National Education Association has studied the consolidation legislation offered by Senators Roth and Sasser. While we have some sympathy for their goal of streamlining the administration of federal programs, aspects of both these bills give us cause for alarm.

NEA is concerned that the bills which the Committee proposes to mark up, S 45 and S 807, are ill-conceived approaches to the objective of simplifying the administration of federal assistance. Both bills suffer from a single glaring defect: they unabashedly hand over to the Executive Branch unprecedented authority which Congress has traditionally held.

Under the proposed legislation, the President -- any President -- would have the privilege of rewriting existing law, submitting a plan for reorganization and consolidation to the Congress, and being able to expect a simple up-or-down vote on a very fast track, no amendments permitted! We doubt that Congress should or can be expected to give away so much of its Constitutionally derived legislative power. The Congressional role has developed as a time-tested process of hearings-markup and floor action which we view as a rational plan for legislation.

Second, Congress would authorize the Executive Branch to determine, with minimal restraint, the terms and conditions of assistance under the reorganized or consolidated programs. These terms and conditions could very well require administrative reorganization at the state and/or local level.

Third, we object to the likely impact on civil rights. Not only would the Roth proposal permit the Executive Branch to write out of existing law whole classes of citizens and/or beneficiaries; it could transfer so much authority to states that current law and regulation pertaining to sex and race discrimination would be seriously undermined.

A fourth concern is the level of funding of social programs. Under the present revised budget requests, many programs are earmarked for drastic cuts or total extinction. The proposed legislation allows for the total elimination of categories of federal assistance at a time when Congress still assigns high priority to many specific populations and enterprises. Consolidation should not be the vehicle for wholesale shifts of federal assistance.

NEA urges the Committee to refrain from adopting this legislation. We view these two bills as undermining the stability of the legislative process as it has evolved with time. Attached for your review is NEA's brief analysis of S. 45 and S. 807.

NEA ANALYSIS OF ROTH AND SASSER FEDERAL CONSOLIDATION ASSISTANCE BILLS

TITLE I

Background

Senator Roth (S. 807) and Senator Sasser (S. 45) have introduced bills designed to increase the flexibility state and local officials have in administering Federal assistance programs. The principal title of each Act would establish new procedures that would enable the President, with, in effect, Congressional concurrence, to waive existing rules and consolidate programs.

Each bill shares the same basic approach to achieve this objective. Under each proposal, the President would be able to submit a "consolidation plan" for programs that are "functionally related" that would:

- o place responsibility for administering the plan and each program with a single Federal agency; and
- o specify in detail the terms and conditions under which the programs could be administered. Presumably these terms and conditions would be derived from and standardized for each of the consolidated programs.

The bills borrow from the process established for reorganization under the Reorganization Act and set a "fast track" schedule that guarantees a vote on any consolidation plan submitted by the President within 90 Congressional days after it has been transmitted to Congress. Plans would be referred to a designated Committee, and joint referrals to other committees could be made for a maximum of 15 days. Each House must affirmatively act on a resolution approving a plan before it is approved. Plans are not subject to amendment on the floor or in Committee, but the President may amend a plan before it is reported to the floor of either House.

Consolidation plans may not consolidate programs that are not functionally related, transfer administrative responsibility to any agency that was not responsible for administering any of the programs before the plan was submitted, or provide for eligibility for a group or person which is not eligible under one or more of the consolidated programs.

Plans must also specify a date upon which they will expire. No plan may be effective for more than ten years.

Consolidation plan provisions supersede any provisions of earlier law that may conflict with the plan.

Differences Between Roth and Sasser

The Roth and Sasser bills also differ in several significant ways. These differences include:

- Sasser requires that consolidation plans must be submitted to Congress within sixty days after each session of Congress has convened (S. 1003.a). Roth does not include this provision.
- Sasser requires that the plan's administrative terms and conditions must be drawn from the terms and conditions included in one of the consolidated programs (S. 1003.b(2)). Roth does not include the

provision. Sasser also allows other conditions that are needed to insure that intended benefits are delivered to intended beneficiaries, however.

- Sasser requires that the President submit after the first 60 days of each session a detailed analysis of the need for and desirability of consolidating Federal assistance programs, a description of the plans he proposes, and a report on the implementation of plans which have become effective. If the President did not submit a plan the previous year, he must explain why he did not (S. 1003(f)). Roth does not include this provision.
- Sasser does not allow a plan to exclude any person or group from eligibility under the plan if they are already eligible under one or more of the consolidated programs (S. 1004.(a)(4)). Roth does not include this provision.
- Sasser states that no "action or other proceeding" begun legally by a Federal official shall abate when a plan takes effect (S. 1006.c). Roth does not include this provision.

Analysis

Several features of this proposed legislation are quite troubling.

1. The adaptation of the Reorganization Authority "fast track" approach will create the potential for

weak Congressional oversight. The consolidation plans will be complex, and the implications of different organizational choices and administrative and eligibility requirements will require careful, thorough study. The fast track approach will not provide time to do this.

This problem will be exacerbated because the plans will undoubtedly be assigned to the Governmental Affairs/Government Relations Committees. They lack the detailed program expertise of the authorizing committees. And the authorizing committees will have only 15 days to review these plans under the legislation's joint referral mechanism.

Congressional review will also be severely hampered by the time plans must be submitted. Congress will be deeply involved in budget related issues when these plans are submitted within the required first sixty Congressional days of each session, and enmeshed in reauthorization considerations while the 90-day clock is ticking.

The inability for the Congress to amend a plan also weakens its review capacity. It is not clear why the problem this legislation seeks to address--conflicting, confusing administrative and eligibility requirements--needs this remedy.

Should the Congress adopt a similar process for all tax legislation? Or for reviewing treaties? On balance, the problems this legislation wants to address don't appear to equal the delegation of power from the legislative to the Executive Branch this legislation proposes.

2. Several vital definitions are very vague, including:

   o "functionally related programs"--

   Sasser defines this to mean "programs which have, in essence, the same major purposes and provide assistance to the same types of beneficiaries and recipient groups" (S. 1001(4)). This is extremely vague and invites debate and disagreement.

   Roth defines this as "programs which fall under a single functional category as set forth in the Budget" (S. 1001(4)). This is more precise, but underscores the conceptual difficulties inherent in the approach each bill adopts. Does the Congress want to provide a fast track, minimal Congressional review of plans to consolidate day care for welfare families with education for handicapped children (Function 500)? Or sewage treatment plant construction grants with soil conservation and hydroelectric power development activities (Function 300)? Or airport construction and urban mass transit and highway construction (Function 400)?

- "terms and conditions"--
  Each bill (S. 1003.b(2)) requires that the plan must "specify in detail the terms and conditions" under which the plan will be administered. Sasser, unlike Roth, then adds, as noted earlier, that the President is limited by the terms and conditions included in one or more of the consolidated programs and other conditions needed to insure that benefits reach intended beneficiaries.

  This also seems unduly vague. Does this phrase refer to only statutory requirements? Case law that has developed over time? Regulations? The Sasser limitation clearly is preferable, because without it the President could essentially re-write a completely new piece of legislation with no reference to existing law and move it on the "fast track." Yet the Sasser allowance for "other conditions" is broad enough to accomplish that as well.

Unless this term is specifically defined and the President limited completely to using only provisions already incorporated in existing law, this legislation gives any Administration virtually a blank check to define how assistance programs will be administered.

Moreover, it may be desirable to try and describe some guidelines for selecting among existing terms and conditions. Under Sasser's one or more construction the President still retains immense power and can pick the most restrictive eligibility, loose reporting and ambiguous definitions--all in the name of simplicity and flexibility.

3. The Sasser provision (S. 1004.a(4)) that prohibits any plan from excluding people already eligible under any consolidated program is critical. The Roth bill contains no such limitation. Without such a provision, consolidation plans could be used as blunt budget instruments to strip people of benefits and services. Again, this would not be as troubling at least procedurally if adequate Congressional review and oversight occurred. But with the "fast track," changes could be made under the guise of administrative reform that disenfranchise recipients.

Given the broad definition of Federal assistance, organizations, including states, cities and counties, could also be cut off from assistance if the President is given this flexibility in shaping the provisions of consolidation plans.

The Sasser protection needs to be refined, however. It protects groups or persons "already eligible." It should be clear that this covers those who are technically eligible, but who may not actually be receiving benefits or services at the time a plan becomes effective. If this latter assurance is not provided, many who technically might not be receiving benefits precisely at the time a plan becomes effective could be deprived of services or benefits the Congress intended them to receive.

4. The proposals are virtually silent on the organizational implications of consolidation plans.

At the Federal level, the proposals state (S. 1006(c)) that plans may transfer existing appropriations and budget authority for use in the new consolidated program. S. 1003.b(1) also requires each plan to place responsibility for administering a plan and each of the programs included in it with a single Federal agency.

It seems clear this would supersede existing laws that assign various rulemaking, grant decisions, monitoring and compliance responsibility, and other authority to different Federal officials. In effect, then, this legislation provides another means to reorganize the Federal government.

What is not clear is what happens to Federal staff associated with programs included in a plan. Are they transferred to the designated single Federal agency? Do they remain in their existing agency? If so, what are their responsibilities? Each bill is silent on these and related questions.

Equally ambiguous is what happens at the state and local levels. While the legislation is intended to provide additional flexibility to state and local officials, plans could adopt "terms and conditions" that dictate new organizational arrangements. For example, a manpower plan might select the Employment Service organizational terms and conditions, and thereby require that CETA and vocational education be administered by State Employment Services.

A plan could also turn over administration of programs from local non-profit groups to state agencies. For example, Head Start could be transferred to State Welfare Departments under a Social Services Consolidation Plan that allowed states to administer all programs in the plan consistent with the terms and conditions of the Title XX program.

The President could not only rearrange state and local administrative arrangements in this manner, but could literally re-define the entire purpose and character of a program. This possibility is, of course, enhanced by the legislation's stipulation (in S. 1006.a) that a plan's provisions supersede existing law.

OTHER TITLES

The Roth and Sasser bills also include other titles that streamline Federal financial management and audit requirements (Title II - Sasser and Roth bills); amend the Joint Funding Simplification Act to enable state and local governments and nonprofit organizations to file integrated grant proposals that would draw resources from several programs (Title III - Sasser); amend the Intergovernmental Cooperation Act to encourage simplified, standardized administration of Federal assistance programs (Title VII - Sasser, Title III - Roth) and other miscellaneous provisions.

Several of these proposals also raise some significant concerns. These concerns include:

1. Proposals to simplify and standardize Federal assistance requirements could significantly reduce state and local accountability.

The Roth (Title III) and Sasser (Title IV) bills would provide means to simplify the administration of generally applicable Federal assistance requirements. Under each proposal, the President would be required to designate a Federal agency to "coordinate the preparation of national policy assistance standards for requirements normally attached to Federal assistance." These standards, which would be uniform guidelines for all assistance programs, and would cover such areas as labor practices, equal employment procurement standards and environmental protection. Depending on the agency designated to develop these guidelines, such standards could be useful and might minimize conflicting requirements among various programs.*

Sasser would allow the Administration up to two years to issue the standards, and Roth would allow one year.

---

*For example, it would be desirable to have EEOC, but probably not Labor, to issue equal employment standards. If OMB was assigned lead designation for many of the requirements, the standards might be used to reduce spending.

Once issued, each agency that provides assistance would be required to implement and monitor the standards.

Two specific problems exist in the bills:

(1) The Roth bill does not include language in the Sasser bill which states that no standard shall "diminish or detract from...any enforcement or compliance procedure, especially (those) designed to enforce prohibition against discrimination..." (Sec. 704(e)). Without this protection, the standard setting process could, when coupled with the law's presumption that these standards supersede all existing rules and guidelines, effectively gut the government's anti-discrimination efforts. While the bills describe a consultation process, the standards would be issued without the formal administrative procedures (hearings, issuance of proposed rules, etc.) normally associated with Administrative rule-making and standard-setting).

(2) Federal agency heads can accept state and local "reporting requirements, regulations, directives, standards, and compliance monitoring and enforcement procedures" (S.

705.b). While the proposals state that this does not limit an agency's responsibility to enforce Federal law and regulations, it seems to provide an opportunity, outside the legislative and rule-making process, to eliminate Federal oversight. If this occurs, the Congress, by passing this Act, will have virtually extended revenue sharing to every Federal assistance program.

2. Roth's Miscellaneous provisions (Title VI) would exacerbate these accountability problems.

Title VI in S. 807 would:

o allow state or local officials to, in effect, waive any Federal requirements in any Federal law that specify state and local organizational arrangements.

o repeal all Federal maintenance of effort provisions.

o prohibit Federal actions to diminish, negate or supersede any state practice for appropriating and expending Federal assistance funds, designating the state agency to administer any program, or reviewing state plans and applications for Federal assistance.

These provisions, like those described above, could revise every Federal assistance program into a form of general revenue sharing. Moreover, states might quickly move to pull out support for activities they had financed because of maintenance of effort requirements. Other Federal goals such as public participation might be dropped in states where this was not standard practice.

○